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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 00243 (SHS)

5 ANDREW OWIMRIN, a/k/a "Andrew Owens,"  
6 a/k/a "Jonathan Stewart," and  
7 SHAHRAM KETABCHI, a/k/a "Steve Ketabchi,"

8 Defendants.

9 November 6, 2018  
10 9:30 a.m.

11 Before:

12 HON. SIDNEY H. STEIN,

13 District Judge  
14 and a jury

15 APPEARANCES

16 GEOFFREY S. BERMAN

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18 Southern District of New York

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Also Present:

CHRISTOPHER BASTOS, Detective NYPD and HSI

CHRISTINE LEE, Paralegal Specialist USAO

SAMUEL TUREFF, Paralegal

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Summation - Mr. Schmidt

1 (Trial resumed; jury not present)

2 THE COURT: Good morning. The jury is here. I am  
3 having my deputy pass out to counsel the very final jury  
4 charge.

5 Mr. Schmidt, you had asked about that.

6 MR. SCHMIDT: Thank you, your Honor.

7 THE COURT: The printer put a line in the same place  
8 on each page. Just ignore it.

9 Let's bring this jury in.

10 I remind everyone, lawyers and clients, not to display  
11 emotion, not to display negative feelings or positive feelings  
12 about what is being said.

13 (Continued on next page)

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Summation - Mr. Schmidt

1 (Jury present)

2 THE COURT: Please be seated in the courtroom.

3 Good morning, ladies and gentlemen of the jury. We  
4 now are going to hear the defense summation by Mr. Schmidt on  
5 behalf of Mr. Owimrin.

6 Remember, listen to what he has to say, but also  
7 remember that you decide what the evidence is.

8 Mr. Schmidt.

9 MR. SCHMIDT: Good morning, ladies and gentlemen.  
10 While they tell us all the time that every vote counts in a  
11 general election, this is a little different. This one you can  
12 really picture how every single vote counts, because the  
13 government has the burden of proving beyond a reasonable doubt  
14 to every single one of you. And that's a great burden. And  
15 while it may seem unfair for the government to go first and  
16 last, and I used to think that, it really isn't. What it does  
17 do is tell you really the significance, the importance, the  
18 reality of the presumption of innocence and the burden of  
19 proof. It is real. It is important.

20 It's important because Andrew Owimrin is represented  
21 by me. I am not a member of a government. I am not a member  
22 of a firm of a thousand people. I have two young men helping  
23 me trying to protect Andrew from the charges brought, not by  
24 these very competent intelligent young people, but by the  
25 government, with their resources, with their power, and their

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1 persuasion. That's why they go twice, but that's why they have  
2 that very, very heavy burden.

3 Everyone's life, including Andrew's, have many  
4 chapter. Each chapter is important to understand who Andrew  
5 Owimrin is, what he is capable of doing, what he did do, if the  
6 government proved what they said he did. Each chapter is  
7 essential for your understanding to make a determination, not  
8 whether Andrew Owimrin was part of Olive Branch Marketing or A1  
9 Business Consultants. Of course he was. It's not whether he  
10 made these sales. Of course he did. Obviously, not all the  
11 sales that came out were made by Andrew. For example, the sale  
12 made to Patricia Cabral had nothing to do with Andrew, either  
13 in the sale or in the aftermath. But it is important to look  
14 at the whole picture.

15 Previously, I talked to you about the drop in the  
16 bucket, that over a course of two years you might have thought  
17 it was a drop and it was nothing, but by the end of two years  
18 you had an overflowing bucket. So you do have to remember that  
19 while obviously events, such as involving Jane Thompson, went  
20 over months, that the development of Andrew Owimrin as a  
21 telemarketer in the, quote, biz-op's world, took place over a  
22 long period of time.

23 And our instincts tell us that when you develop an  
24 opinion, an idea, a consciousness of something, you become a  
25 fan, that seeing something that doesn't quite go along with

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1 that is excused. It's excused because everything has  
2 exceptions, everything doesn't work perfectly right. But if  
3 you're trained and you believed, and if you honestly believed,  
4 and you see something a little bit different, it does not make  
5 the same impact. You're looking more for the impact of  
6 something that agrees with what is going on, or what you  
7 believe is going on.

8 And we are not here to decide whether Andrew Owimrin  
9 didn't make a mistake, that he was wrong, that he should have  
10 known better. We are here to decide whether the government has  
11 proved beyond a reasonable doubt that he knowingly and  
12 intentionally, basically was a fraudster. Knowingly and  
13 intelligently.

14 Now, knowingly to some extent can be objective, but  
15 intentionally is personal. It's personal and different for  
16 everybody. And there is no question in my mind that many of  
17 you sitting here, if you were approached on the telephone by  
18 anybody who worked in biz-ops, would immediately assume scam.  
19 There are some of you that you listened to the phone and it  
20 took you a while before you realized you didn't want anything  
21 to do with this. Everybody is different. The victims are  
22 different. The people who didn't become victims are different.  
23 Just as the people who got involved are different.

24 We saw three people who were customers, and I am not  
25 going to argue, they were victims of a fraud. The exact type

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1 of fraud, maybe I could have a discussion, but that's not  
2 important, it was a fraud. And we saw the son of one person.

3 Now, we saw a very small time frame, very small number  
4 of the people that Andrew came in contact with. So don't lose  
5 sight that this was the selection by the government to prove  
6 their case. They picked what they thought was the best, and  
7 they left out the other 97 percent. And I'm not going to argue  
8 with you that the witnesses have a right to be angry and  
9 aggrieved. And you saw the anger expressed in different ways.  
10 You saw the way Ms. Thompson expressed her anger, her anger at  
11 anybody sitting at that table, assuming that they must be  
12 involved in this. You saw how Ms. Weissenberger expressed her  
13 anger. You saw Mr. Kandar express probably a mixture of anger  
14 and disgust. I am not going to say they shouldn't. I can't  
15 tell you how I would feel if my mother would have been in the  
16 same situation. But we are not here for that. We are here to  
17 make a determination about all of the evidence -- what they  
18 said, what they said that appears correct, what they said that  
19 appeared mixed up with another company, and the other  
20 evidence -- whether it proves beyond a reasonable doubt that  
21 Andrew Owimrin had the knowledge and had the intent to be a  
22 defrauder.

23 I left off Ms. LaMorte when we were talking about  
24 that. While Ms. LaMorte's testimony had some mistakes, and I  
25 will go over that with you, Ms. LaMorte did not express the

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1 anger as the other people did, and probably because she did not  
2 lose the \$8500 that she could have lost, because she did the  
3 smart thing and called her accountant and canceled. So she is  
4 probably not as angry. But don't forget that she lost money  
5 with a person who, unlike Andrew Owimrin, was Mr. Stroud who  
6 pushed and pushed and pushed and threatened.

7 Mr. Stroud, he may have been a fraud. He certainly  
8 didn't treat her very well. Andrew Owimrin did, because he is  
9 different. And that's the kind of way you see how, yes, he can  
10 be in the midst of some of these sharks, but he still can be  
11 Andrew Owimrin, and he still can believe what he is doing is  
12 not a crime, not wrong, until, of course, he sees, like you  
13 see, everything put together, things in black and white, that  
14 he did not know before, and he sees that this is a fraud.

15 Before we get actually into the case itself, we do  
16 need to start with who Andrew Owimrin started out to be,  
17 because you can't understand how he could believe that he was  
18 doing the right thing unless you know him.

19 So we start out in 1989 when he was born to a mother  
20 who emigrated from Greece and a father who emigrated from  
21 Jordan. He had three brothers, but the brothers, the one  
22 closest to his age was already six years older. So these were  
23 not just brothers, these are people who he looked up, he  
24 followed as a younger brother who is much younger does.

25 He is the person that when his father needed him to

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1 leave school after the tenth grade, he left school after the  
2 tenth grade and worked for his father. Does that impact on  
3 somebody? Of course it does. It impacts on their education.  
4 It impacts on their life experience. It impacts on many  
5 things.

6 He worked for his father when his father could no  
7 longer work for the business. He ended up in maintenance and  
8 working in restaurants as a busboy, delivery boy. He worked at  
9 jobs where you follow the boss, what the boss tells you, or you  
10 get into trouble. You don't think beyond what is clear to you  
11 in the beginning. If it looks right, you accept it.  
12 Unfortunately, he went into a business where listening to his  
13 boss has put him here before you, with them trying to convict  
14 him of two very serious crimes.

15 So instead of becoming a police officer, where he  
16 would have to wait to go into the school, he went with his  
17 cousin and met three men: Bill Sinclair, Michael Finocchiaro  
18 and Arash Ketabchi.

19 Now, for my own sake, and probably yours, I am  
20 probably going to call them Bill, Fino and Arash so I get it  
21 straight.

22 Bill Sinclair was con man extraordinaire. Just  
23 compare him with Fino. It's just day and night. He can sell  
24 anything. He sounds like he can sell anything. As easy it was  
25 for him to become the manager of training and quality assurance

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1 at The Tax Club, the ease it was to get Andrew Owimrin all  
2 excited for this young man to make money, like \$80,000 a year,  
3 to explain how easy it's going to be, how we will train you,  
4 how we will show you how.

5 When he is trained, and obviously not formally  
6 trained, but as he testified, he would come over and talk to  
7 him about what to do, he watched other people, and he learned  
8 his own way to do it. Now, we certainly know his own way is  
9 not the same way as Arash's. But when you're training somebody  
10 and you explain to them what you can't do, you can't make  
11 earnings claims, but we want you to -- you can't make earning  
12 claims, do they tell you that the reason they don't want you to  
13 do earnings claims is not because it's the wrong thing to do,  
14 but we want to stay under the radar, we want to be near the  
15 line, we want to be in the gray area? No, of course they don't  
16 say that.

17 And when they give you an example of how to talk to a  
18 customer, in a way that leaves a positive feeling with the  
19 customer that this item will be helpful to them, do they say,  
20 look, we are going to explain to you how to really make an  
21 earning claim in a different way just so we don't go over the  
22 line, we stay in the gray area? No, they don't do that. They  
23 tell him, this is the way you can do it and this is the way you  
24 can't do it.

25 And they had rules and they have forms. And you will

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1 see the forms. It's in evidence. We read from one. The  
2 government showed others. There are people who make mistakes,  
3 as Andrew has made mistakes. Each one of the forms found in  
4 the evidence seized by the government about Andrew, eight of  
5 them were put in, and some of them are not particularly  
6 terrible, they are wrong, but it shows that clearly he is not  
7 doing what some of the other guys are doing. And you can take  
8 a look at the form, and we showed one of them during Fino's  
9 testimony of DiQuarto, who is not one of the good guys in what  
10 he said.

11 Now, again, you sit there, and you saw the room where  
12 the government said all this occurred and you saw the desks.  
13 And the government is saying, well, of course he had to hear  
14 Arash saying everything. Of course he heard Arash yelling when  
15 he was yelling and loud when he was loud. But that doesn't  
16 mean when somebody is making an earnings claim, knowing that  
17 they are not supposed to, that they are going to broadcast it  
18 in the room. They are not going to do it. They are going to  
19 do it more quietly or in the bathroom or a closet. They are  
20 not going to broadcast the bad stuff.

21 And yes, Andrew saw the bad stuff. Andrew made some  
22 mistakes. He was fined. Other people were fined. He was  
23 warned. People were warned. One actually left because of the  
24 fines.

25 So from a person who has no experience, not only in

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1 telemarketing, but in any kind of sales, who is given the rules  
2 and sees how the rules are actually followed, not perfectly,  
3 not every single time, but he sees the rules, that reinforces  
4 him that there is a right way to do it and the wrong way. It's  
5 not presented as there is the wrong way and less wrong way, as  
6 Bill Sinclair tried to show us. It's presented as the wrong  
7 way and the right way.

8 Now, I can't come in here and tell you that the right  
9 way that was taught was absolutely right. I have a tendency to  
10 doubt it, but that's not the issue. The issue is, does he have  
11 a good faith reason to believe that the right way was the right  
12 way, and he kept it to the right way, that he was doing what he  
13 was supposed to be doing? I don't even want to put the word  
14 legal or illegal in it because he is trying to do it the right  
15 way. No one is talking to him about this is a crime, you could  
16 get arrested for fraud. It's the right way or the wrong way.  
17 It's what he believes.

18 While it's really hard to prove what somebody  
19 believes, his Honor will charge you that there is no magic to  
20 it, you have to look at what the person does to find out what  
21 they intended and what they knew, and that's absolutely right.  
22 So Andrew spoke to you, and I will discuss that later, and  
23 explained what he intended. But from many of his actions, or  
24 lack of actions that others did, it's consistent with him in  
25 good faith believing what he was doing was not wrong.

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1           One of the important things when you're trying to  
2 figure out what a reasonable doubt is, and it sort of explains  
3 itself, if what I tell you about this case resonates, makes  
4 sense, so it's consistent with what you determine what happened  
5 to some degree, well, that's sort of saying to you, then that's  
6 a reasonable doubt.

7           More importantly, if you're taking a flight from here  
8 to England, and they were working on the plane before you take  
9 off, you don't want a mechanic that seems to know what they are  
10 doing, or probably knows what they are doing; you want a  
11 mechanic that knows what they are doing. Now, you can't know  
12 about anything absolutely, but when was the last time anyone  
13 took a flight on what is now -- I forgot the name of the  
14 airline down in Florida that crashed with all these oxygen  
15 tanks and all these tanks aboard. They changed their name.  
16 They lowered their prices to the very lowest to get people to  
17 come on because you don't trust them anymore. You don't want  
18 that. And when you're deciding, you want the airline, if you  
19 have a choice, that has had no mechanical problems that have  
20 caused any kind of danger to its passengers. And that's sort  
21 of what you're looking for here.

22           Now, Mr. Tureff testified here, and it was for two  
23 reasons. One was the telephone calls between Emily Miller and  
24 Andrew and Andrew and Ms. Thompson. The other one was to show  
25 that no telephone calls were made on his cell phone to the

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1 customers, during the period they had his cell phone records,  
2 that matched up with the period that he was at Olive Branch.  
3 That's all. But why did we do that? We did that because you  
4 saw -- you will see the complaint that Paul Curtis made about  
5 him. And we know that some people did indeed make earnings  
6 claims.

7 Then the government brings out from Bill Sinclair, in  
8 his nice way, about, oh, people could avoid these monitoring by  
9 using their cell phone. So that would explain why there is  
10 nothing real serious against Mr. Owimrin. But if you see from  
11 his records that we put in, and the testimony, not a single  
12 sale that he made, that we had proof of that he made came, from  
13 his cell phone, period, up to the point when he moved to A1 for  
14 the few weeks they did not have landlines. But at Olive  
15 Branch, none. He did not do it.

16 He was not sneaky in any way. He was not Pete  
17 DiQuarto. He was not Chris Wilson. He did not get customers  
18 to get another credit card so he could change the billing from  
19 one credit card to the other one so they can't charge back. He  
20 is not one who got the people to send in cash advances and send  
21 it in and pay for it so they can't get chargebacks. He did not  
22 tag team with Arash Ketabchi to bulldoze a potential customer.  
23 He did not do those things because that is not who he is or how  
24 he learned to do that job.

25 And how did he learn to do that job? He told you when

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1 he answered a couple of questions from the judge.

2 Can everybody see it?

3 Now, that's just not an answer he made up here. This  
4 is how he thinks, how he does. You can take a look at one of  
5 the calendar entries in A013, where he explained to you, he  
6 never sold the logo before. So what did he do? He brought  
7 somebody over who sold the logo, who knew what to answer, and  
8 he split the sale with him. That's what he does. That's not  
9 what a bad salesman does. It's somebody who is trying to do it  
10 the right way.

11 Now, the government eventually understood what the  
12 purpose was of bringing the telephone numbers in. In its  
13 summation it says that, "Management decided that it wasn't in  
14 the interest to monitor calls and salespeople like Andrew  
15 Owimrin were free to make any representations because no one  
16 would hear him as long as he is careful."

17 Two things are wrong with that. One, it's not  
18 terribly clear whether it's a year or two years they had it  
19 before they let it go. They testified that they did not tell  
20 the salespeople that they weren't monitoring them anymore  
21 either.

22 It is clear that if you came from Tax Club and you  
23 knew how all of this worked, like Bill, Mike and Arash and  
24 other salespeople, and you knew how all these sales started,  
25 and if you knew the limited value of some of the

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1 products -- and some of the products seemed absolutely full  
2 value, some of them seemed overpriced, and some of them seemed  
3 like garbage -- if you knew all of that, you're guilty of a  
4 fraud, there is no question about it. But we are not here to  
5 decide what those people did. We are here to decide -- I think  
6 that everyone understands that Andrew came in with no idea.  
7 You are really here to decide that if he worked during that  
8 period of time that he worked, how could he possibly have not  
9 known what was really going on? You have to ask that question.  
10 If you don't ask that question, I don't know what to say,  
11 because that's the question that brings us here.

12           You learned how everything worked. The salespeople  
13 made the sales. We will talk about the sales in a little  
14 while, especially the ones where there is more evidence.  
15 After they make the sale, what happens to that person, in this  
16 case, Andrew? If it's a credit card, they go to Bill's office  
17 to make sure that there is sufficient money in there to close  
18 the contract. Then it goes to compliance.

19           And everybody keeps on calling compliance secretaries.  
20 Well, maybe you can call them a secretary, but often  
21 secretaries know more about what is going on than their bosses.  
22 So they go to a secretary that has a conversation with the  
23 customer and goes over step by step of the contract to make  
24 sure the customer understands. And if the customer doesn't  
25 understand, it's either the salesman coming in to answer the

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1 questions, or if he is on the phone with somebody else, it's  
2 Bill or Fino coming in and answering the questions, and I can't  
3 answer for what Bill or Fino said, but Andrew will answer the  
4 questions.

5 The first appointment is made with fulfillment. A  
6 welcome, whatever, is given. And the office then is basically  
7 done if everything goes smoothly. If it's an LLC, the  
8 fulfillment people take over. They make some phone calls to  
9 the customer to get the information so that they can get all of  
10 the documentation so they can give that information to the  
11 person who is going to file that LLC in that state.

12 If it's a business plan, corporate credit, something  
13 that requires both a generic booklet, where there is no  
14 evidence that he ever saw the booklet, it gets sent out and  
15 appointments are made for them to have training with people  
16 from fulfillment about the business plan, or how to take step  
17 by step of corporate credit. And even if it takes two years to  
18 get corporate credit because the person has nothing to show  
19 before that, it takes two years. If the person is actually  
20 running a business, or has run a business in the past, it's  
21 obviously going to take much less time. If the person has  
22 really good credit, it's going to take less time. If  
23 everything goes smooth, Andrew doesn't hear from those people  
24 anymore.

25 Fino came up and testified that, Oh, we were getting a

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1 lot more problems, and it's obviously because they were not  
2 being fulfilled properly or sometimes explained to the  
3 customers, and it was his job to try to do what is called a  
4 save. He said Andrew is one of the people he asked to do the  
5 save. And it's not a surprise. You saw the way Andrew talks.  
6 But it really was left, at least in my mind, that it was the  
7 whole period of time of saves, that included chargebacks, that  
8 he would be talking to customers.

9 But on cross-examination it made it clear. He talked  
10 to a few customers that occurred between the third day, for  
11 people under 65, to the 14th day of people over 65, if they  
12 wanted to cancel, not chargeback, cancel their agreement. And  
13 we know from Ms. LaMorte's testimony that she canceled. Either  
14 Andrew called her, which is probably more likely, or she called  
15 him to find out what was going on. That's what he did.

16 We didn't do this in court here after he got arrested.  
17 He didn't have this conversation with her because he thought he  
18 was going to get arrested. This is who he is. This is the  
19 person that Andrew Owimrin is. This is the antithesis of a  
20 fraudulent biz-op salesman. This is a decent, honest human  
21 being who has been pitched and sold by his boss that what he is  
22 doing is legal.

23 Don't do that. That's earnings. You can't do that.  
24 Stay within the guidelines. Sometimes they are a little wrong.  
25 That's the way you do it. This, I say to all of you, is one

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1 very important piece of proof that he is not a person who  
2 intends to defraud. He doesn't even intend to bully anyone  
3 doing anything they don't want.

4 If you take a look at the calendars that we put into  
5 evidence and he talked about, they are in evidence -- there's  
6 about 34 of them, or something like that -- you will see the  
7 nature of the customers that he usually speaks to, the way he  
8 deals with them. That's Andrew Owimrin.

9 Now, Bill Sinclair, you saw him on the witness stand.  
10 At times he was very good. At times he was looking like he  
11 just didn't want to answer my question. He wanted to make it  
12 sound worse for my client, in a way that really can't be so  
13 much contradicted by my client. All of a sudden they are going  
14 to throw the book at him because they think he's lying. But  
15 sometimes he says a little bit too much.

16 So he said Ray Quiles came in, and he came in and told  
17 people, you can't make earnings promises, you can't make  
18 earning promises. How many times did Ray Quiles come in to  
19 tell salespeople? Dozens of times. Let's say three dozen is  
20 the number. I think three dozen is 36. And we know that in  
21 Youngevity that not specific earnings claims, but the general  
22 ones of a check within 60 to 90 days, and every two weeks  
23 another check, whether right or wrong, was what their bosses  
24 told them they could say. So we are not really talking about  
25 those earnings, because those Ray Quiles would not complain

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1 about because those were a part of the so-called script. So we  
2 are really talking about before Youngevity. Youngevity started  
3 in about December of 2014.

4 Andrew was there about six months before then. Now,  
5 maybe even the meetings started before with Ray Quiles. We  
6 don't know. Now, if it started six months before, there are 26  
7 weeks in six months. If Ray Quiles went there 36 times, he was  
8 going there three times every two weeks to tell them.

9 And what did even Sinclair say about it? How  
10 regularly were those meetings during 2014, '15? Well, for a  
11 time in that window, we had them on Fridays, but not for the  
12 entire time, sometimes we just had them as needed.

13 There is no question that Ray Quiles may have came in  
14 and said something, because there were people who did it, and  
15 those people were supposedly punished, told that it was wrong.  
16 It was reinforced to Andrew, that's wrong, that's right. It  
17 makes it less likely that he is going to think it's obvious  
18 that this whole thing is a fraud when they do that. The more  
19 they do that, the more he thinks they are trying to run it the  
20 right way. I'm not saying they did, but it's what he thinks,  
21 what this 25-year-old at the time, with a tenth grade  
22 education, who has been taught by them, thinks.

23 And notwithstanding Mr. Sinclair's testimony that, oh,  
24 training or coaching was separate, or they had to buy it  
25 separately, we saw the sales forms from Thoth, and you see that

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1 even the basic plan of a business plan comes with two weeks of  
2 training, with a document. You see corporate credit comes with  
3 six weeks of training, with other information.

4 Andrew was not part of fulfillment. Andrew was a  
5 salesperson. He accepted what these things said. He accepted  
6 what was told to him as real. And the government wants you to  
7 say that that's ridiculous. In Andrew's position, that's what  
8 he should have done. He did not deal with chargebacks in any  
9 way. Oh, yes, he heard sometimes there's a chargeback,  
10 somebody is not happy, and he had to pay back his commission,  
11 usually in cash for it. So he knows that to some extent that  
12 somebody was unhappy, they didn't want to do it, and you can  
13 see in some of the documents why.

14 But he didn't talk to the people who wrote letters to  
15 the attorney general or to the credit card company. He did not  
16 deal with that. He was not involved in any e-mails of any of  
17 these discussions, whether at Olive Branch or A1. The only  
18 e-mails we have seen are ones where a list is passed -- lead  
19 list is passed on to him, or later on when he passes the lead  
20 list to Bill Sinclair. That's the only times he is in e-mails.  
21 We don't see texts about him.

22 So it really comes down to what the witnesses said he  
23 said to them, if it was done with the intent to defraud, and we  
24 will get to that.

25 So we really have two -- and the reason I am here, and

IB68KET1

Summation - Mr. Schmidt

1 I am going to be here this long, is because I am defending  
2 Andrew Owimrin really against two frauds. The first fraud is  
3 he should have known this whole business was a fraud. And I am  
4 explaining why that is not so, and the government could not  
5 possibly prove that beyond a reasonable doubt for Andrew  
6 Owimrin. If he knew the breakdown of where the sales went, you  
7 might then have the thought that, hold it, something's not  
8 right here.

9 And you know, in the judge's charge for knowledge,  
10 because as I have been saying, and I will keep on saying to  
11 remind you, that he has to knowingly and intentionally commit  
12 the fraud, on the knowingly part, if they prove that he knows  
13 it, that would satisfy the knowing. None of the government  
14 witnesses said, oh, we told him it was baloney. They basically  
15 said everybody knew. Generally, other than those grants, the  
16 ones who knew were the ones who were involved with it before.  
17 It wasn't those new guys who had no background at all, like  
18 Andrew or Reagan.

19 So they are going to go to what is called conscious  
20 avoidance. Conscious avoidance is believing the high  
21 probability of a fact is true, that then gives you the  
22 obligation to see if that fact is true or not. And if he knew  
23 that the people who sent the leads got 40 percent of the sale,  
24 that the merchants got 15 to 20 or 25 percent of the sale, that  
25 Arash received 2 percent of the sale for any of the

IB68KET1

Summation - Mr. Schmidt

1 salespeople, that the salespeople got 15 percent of the sales,  
2 and the fulfillment people only got 10 percent, the people who  
3 actually dealt with the product only got 10 percent, then you  
4 would be correct if you were going to think that, oh, he  
5 consciously avoided checking this out, because how did he get  
6 everything done with 10 percent.

7 He did not know that. He was not told that. There is  
8 no evidence at all. He thinks this is running like a normal  
9 business. Because he doesn't know any other normal business  
10 except for the flooring, pizza and maintenance. And that gives  
11 him no help in knowing what is going on, except for him looking  
12 up to these guys that he respects, who he thinks knows it, who  
13 are his bosses, who he is enjoying himself there, maybe too  
14 much, working there, and he is making decent money. He's not  
15 making \$80,000 a year, but he is still making decent money.

16 His trust in these people, though, did cost him  
17 something. And while he is not going to say that it's not his  
18 own fault as well, you had these two people, and others, who  
19 were using oxycodone.

20 Now, it certainly does not help Andrew doing his job  
21 doing lots of pills. He probably was late. It certainly may  
22 even affect to some extent his judgment for it. But even in  
23 that small area of his life, he is being taken advantage of,  
24 without knowing it, by people who are supposed to be taking  
25 care of him. He's asked to pee in a cup so Fino and Arash can

IB68KET1

Summation - Mr. Schmidt

1 get drugs and then sell it back to him. Not tell him, well,  
2 you know, you can go to the same doctor and you can get it  
3 yourself. No, they are having him do things. They give him a  
4 few pills, and then they sell it back to him and they make  
5 money on him, and more money and more money, and you heard what  
6 happened. He lost his home. He had to borrow money from a  
7 loan shark. And then his boss helped him by having his uncle  
8 buy the loan and just charging him \$1500 a month for a year for  
9 this \$8,000 loan. These are people who are users, who take  
10 advantage of people. Andrew is a victim of those type of  
11 people.

12 Now, I am not saying he is the same kind of victim as  
13 the people who put the money in. I am saying he is the same  
14 type. And I tell you, if he had an inheritance before he  
15 started working, Arash would have been all over him to sell him  
16 business opportunities, and he would have fell for it. That's  
17 the difference between the people who are bad in the industry  
18 from people who are actually trying to do the right thing.

19 The government has talked a little bit about grants,  
20 and there is no question that selling somebody a grant that  
21 doesn't exist is fraud. It can't be anything else. There is  
22 no evidence that Andrew ever sold a grant. But what Andrew was  
23 told, and he admitted to you that he knew shortly after he  
24 started working that grants were fraud, what he told you,  
25 basically, is what he understands his business. His business

IB68KET1

Summation - Mr. Schmidt

1 was they got leads of people who purchased into businesses that  
2 were supposed to make money, and that they had the products  
3 that were going to help the businesses either do better or be  
4 more legitimate or protect the owner -- merchant processing,  
5 affiliation Web sites, and drop shipping.

6 Now, a more sophisticated person may have actually  
7 looked all this stuff up. Andrew Owimrin is not that more  
8 sophisticated person. And if you convict him because a more  
9 sophisticated person would have done it, then you are making a  
10 mistake.

11 He was told, it was explained to him that the people  
12 who bought these grant things, it came with one of those  
13 entities that had the potential of making money -- the drop  
14 shipping, the merchant processing, or the affiliation Web site.  
15 And he believed it, and he was selling products for that, just  
16 like he was selling for the leads that came from merchant  
17 processing, or came from affiliated Web sites, or came from  
18 drop shipping.

19 We have heard the witnesses who were victims, who have  
20 purchased those things in the past, and that were to them, when  
21 they purchased them, real. And they were as real to Andrew as  
22 it was to those people who bought them from other companies.

23 And Andrew sold people, a few times that those lists  
24 came through, to try to help their business make money so they  
25 could pay off whatever debt and pocket the rest. And he passed

IB68KET1

Summation - Mr. Schmidt

1 those on to Bill Sinclair when he was at Arash's, not out of  
2 disloyalty, because Arash wasn't selling debt consolidation, he  
3 was selling the same biz-op products. So these could be used  
4 by Bill Sinclair, as well as Arash, for those who wanted to  
5 consolidate their debt, and he was trying to get in good with  
6 Bill so he could come back there. Now, think of that.

7 (Continued on next page)

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IB6JKET2

Summation - Mr. Schmidt

1           Now, think of that. He wants to go back to Bill  
2 Sinclair because he thinks Bill Sinclair is absolutely running  
3 the company the way it should be. He has it set up running the  
4 company the way it should be, and Arash isn't even doing quite  
5 as well as Bill is running it. That means when he goes back to  
6 Bill, he is still sold on the industry, he is still sold that  
7 he is not doing bad by what he's doing.

8           Now, the prices of some of the items that he sold just  
9 seems a lot. It seems a lot to me, some of them, some of them  
10 not so bad.

11           An LLC costs \$125 to file, but most people hire an  
12 attorney and accountant to file, and whether it is \$900.00 if  
13 you look around or \$1200 if you go to them, that is not the  
14 point. Search engine optimization, YouTube advertising,  
15 marketing, those are real things. I actually have no idea how  
16 much they cost. I don't know if you know how much they cost,  
17 all right, but Andrew knows what they cost because he's selling  
18 it.

19           Again it is not right because they're taking 15  
20 percent, so obviously -- and the owners are going to take some  
21 percent -- so obviously the prices are jacked up than if you  
22 search the internet for a company that just did that, and on  
23 your own, you may the arrangements and you made the deal, you  
24 would probably save 25, 35, 40 or 50 percent. That is not the  
25 crime. The crime is that the prices were more than they should

IB6JKET2

Summation - Mr. Schmidt

1 be if people went out and did it themselves or got legitimate  
2 help. That is not the crime.

3 Well, it might be evidence that, well, he had to know  
4 something was wrong. This is a young man who did maintenance,  
5 obviously, for an hourly, he worked for his father, I don't  
6 know what he got, and was a busboy in and a pizza delivery guy,  
7 right?

8 He has no idea of what these products cost other than  
9 they're obviously a little higher than what the people, they  
10 went out on their own and did the work, it would cost. So  
11 while the prices sort of are a pain in the back or somewhere  
12 because they seemed too high, they're not the proof of him  
13 knowing this is a scam, knowing this is wrong, knowing that he  
14 should look.

15 In 2014, when he started at -- this was Andrew  
16 Owimrin. He was happy, he was proud, he started to make some  
17 money. (Pause)

18 Now, we now come to the second part, and I am a bit  
19 verbose. I do talk, you can see that. I do it because I am  
20 trying in different ways to have you understand things that  
21 sometimes is not easy to understand. If I was a better  
22 speaker, I probably could do it in less time. I apologize.

23 The second part, the second part is what about the  
24 sales that we've heard about? They don't sound right. It just  
25 gives me -- I don't know the word -- the cooties, that

IB6JKET2

Summation - Mr. Schmidt

1 listening to these women who were taken for all that money. It  
2 was incredibly uncomfortable. It was impossible not to be  
3 upset listening to them. I am not asking you not to be. Now I  
4 am asking you to turn the page and start looking at Andrew.

5 No one who is coming back to recall what happened two,  
6 three, four years ago, when there was no reason to think they  
7 would come to court and have to say what happened, would have  
8 perfect memory. So you can excuse the people who testified  
9 that they don't get it absolutely right, but we're fortunate  
10 that we have documents to see if they got it right or if their  
11 initial statements of what happened sort are skewed towards  
12 Andrew's involved, Andrew did this, Andrew, or Jonathan -- I am  
13 going to use Andrew because that is his name, and obviously  
14 somebody trying to fake their name would not say Andrew Owens  
15 instead of Owimrin, right, and give their cell number out that  
16 when it comes up on the cell, it says "Andrew Owimrin."  
17 Owimrin is not quite as bad as Ketabchi, Ketabchi, which I got  
18 wrong a number of times, right, but it is quite understandable  
19 why sometimes people use those names.

20 It is important then to see if they're trying to put  
21 what happened to them into this one spot that right now has  
22 meaning, and the meaning is the case against Andrew Owimrin  
23 because he is the one on trial, not the people who sold stuff  
24 before to them, but because he's the one on trial.

25 I am not saying this is intentional. I am not saying

IB6JKET2

Summation - Mr. Schmidt

1 that even Jane Thompson who expressed anger and pointed not  
2 only to my client, to the co-defendant, he must be involved  
3 because he is sitting at that table, there are certain things  
4 that are clearly reflected in their notes and is true, and  
5 Andrew admits it. There are other things where it takes sort  
6 of an explanation of the notes to get an idea. The explanation  
7 of the notes is where sometimes where mistakes can be made  
8 because again you're looking at these years later.

9 I think that Jo Ann La Morte not only was important to  
10 show you what kind of person Andrew was every day, but what  
11 kind of mistakes that are made under these kind of  
12 circumstances. She did not show the animus. She is the legal  
13 ebilling coordinator. This is not what the government is  
14 trying to say is people have no clue what is going on. It is  
15 clear that sometimes somebody who is older or somebody who is  
16 not so old but doesn't quite get it, but can sound like they  
17 get it because they want to sound like they get it because they  
18 don't want to sound stupid on the phone, they want to sound  
19 like they really understand it, might have purchased something  
20 that they should not have, but Jo Ann La Morte was not that  
21 kind of person. She clearly understood what she was doing and  
22 how she was doing and what she wanted, all right?

23 But when she testified, she testified that Andrew  
24 Owimrin was going to sell her -- first, she said that that  
25 company, his company, only accepted credit cards. Now, she

IB6JKET2

Summation - Mr. Schmidt

1 also said that that first company, Mr. Stroud said they only  
2 took credit cards. Then on cross-examination, she said ah, I'm  
3 not sure about that. I think he said that. I'm not sure.

4 Now, I didn't get up and ask the question if you just  
5 left it to the government that presents their case because,  
6 hey, they're doing their job is their way and they presented  
7 that piece, right, and because they're looking for the case  
8 against Mr. Owimrin, they put that piece out. That is why we  
9 have a system of attorneys for the defense, because we can look  
10 at things differently, and when we look at these things  
11 differently, we can see something is not right here because we  
12 know, and you can see them in the calendars and you can see  
13 them in the testimony of Jane, for example, Jane Thompson, for  
14 example, they not only take something other than credit cards,  
15 they much preferred taking something other than credit cards.  
16 There are no charge-backs. There is no 15 to 20 percent that  
17 is going to the merchant processing.

18 Obviously, they do, they take something other than  
19 charge-backs. She said that she was going to be putting in a  
20 website to sell her products. Now, you saw her contract. That  
21 contract has the exact same wording of every single Youngevity  
22 contract has of what is being sold. What we do know is that  
23 Mr. Stroud was going to teach her how to do this, teach her how  
24 to use the website and that there were a number of products and  
25 they were going to decide which is the best product to put on

IB6JKET2

Summation - Mr. Schmidt

1 that website.

2 She took what happened there and put it on Andrew. He  
3 didn't do it because she is out to get Andrew, but this is what  
4 happens. She said that she was going to get money not only for  
5 the website they were going to build for her, but for his  
6 company's website. We have seen nowhere that his company has a  
7 website that earns money for anybody. She was mistaken, she  
8 was honestly mistaken, but this is what happens when somebody  
9 is living their life having contact with multiple people and  
10 lose the understanding of which person did what.

11 It happens with her, and she is a small example, an  
12 easy example without having to go through, which I will, more  
13 to show why she's mistaken. We're not angry at her. We  
14 understand it, but she makes a mistake. What happened was she  
15 was sold Youngevity with additional products attached to try to  
16 sell it and told that the website should be up in a few weeks  
17 and that your first check, at this time may have been by 60 or  
18 90, I am not sure, and every two weeks thereafter you'll get a  
19 check.

20 She's a legal person, and that part was not in there,  
21 and so she canceled. Curiously, there is a contract for Mr.  
22 Freeland that is in evidence, and I may or may not have  
23 immediate access to that -- thank you -- wonderful technology  
24 when it works right, okay? He was actually promised a refund  
25 if he didn't get that check within the first 90 days of

IB6JKET2

Summation - Mr. Schmidt

1 activation. In other words, so it is supposed to be activated  
2 quickly. We honestly know they had a real problem with that  
3 for good reason, but once it is activated and you paid for all  
4 those other services, the check was guaranteed in 90 days.

5 This is unusual. If you look at the other contracts,  
6 most of them didn't have it, but this is what they were saying.  
7 So whether it had it or not, right, we accept full  
8 responsibility of this was said, all right?

9 So let's talk about Youngevity. The government  
10 dismissed Youngevity in saying oh, it's just something else.  
11 Well, it wasn't just something else to Bill and Mike. They  
12 really thought they were going to have a gold mine, a gold mine  
13 for them because they were going to be at the top of the  
14 pyramid, right, and they were going to be, oh, my God,  
15 legitimate. They were going to sell something that, indeed,  
16 their customers were going to make money. They didn't get  
17 excited to my client like that but, indeed, that is what  
18 happened.

19 They were going to get a website, marketing, YouTube  
20 promotion, social media promotion, and their customers are  
21 going to make money. Now, I have no doubt that the amount of  
22 money that they were going to make was going to be, you know,  
23 slow and build up, right, and it probably could take, if these  
24 people did nothing, years and many years to get back their  
25 money. If they did something, it would be a lot quicker, but

IB6JKET2

Summation - Mr. Schmidt

1 the government kept on having the witnesses testify, kept on  
2 saying this is bogus.

3 What did Mike Finocchiaro say when I asked him about  
4 making money on Youngevity? He made money. He didn't do  
5 anything because with the internet stuff, you don't need to do  
6 anything. The product Youngevity is similar to Amway. You  
7 know with Amway, it was sold a lot more, certainly the better  
8 product, you put it out and you go to -- I remember a story.  
9 My wife told me this.

10 It was some kind of a cosmetics or drinks or  
11 something, and she would be getting it from a neighbor who was  
12 selling it, and it was one of those kind of Amway things.  
13 After six months she started looking online and she started  
14 buying it from everybody who was getting out of the business  
15 who was selling it at a discount price because they just didn't  
16 want to have it any more.

17 Well, that happens. Certainly people try these  
18 businesses, they don't make as much money as they want to, they  
19 decide I don't want to put the energy into it, and that's what  
20 normal people think.

21 Now, was it the right thing to do to sell to an  
22 elderly person who really didn't want to do any work about it?  
23 I am not answering that question because that is not the  
24 question here. "Right" is not the question here. Was it  
25 legal? If you really thought what Andrew Owimrin thought about

IB6JKET2

Summation - Mr. Schmidt

1 it, was it legal to sell her and say that the company, the  
2 company meaning in this case, the fulfillment company, they're  
3 doing the stuff for you, they're building it, they're  
4 advertising it, you can spend more money down the road for more  
5 advertising if you want, but they're doing it, and if they  
6 included taxes or bookkeeping on it, there was fulfillment for  
7 taxes and bookkeeping.

8 If they wanted to expand, there was Corporate Credit  
9 to help them expand to buy the product from Youngevity, right,  
10 other than business things so they would not be personally  
11 liable. Now, here is another way the witnesses sometimes don't  
12 get it right. Andrew testified that he thought he sold  
13 Charlene Foster Youngevity, and that's why he sold her the  
14 things that would match -- help the business afterwards, an  
15 upsell.

16 He testified to that because he saw it and saw she was  
17 talking about how she is just supposed to go out to the  
18 mailbox. It was wrong. He made a mistake. He was confused  
19 with her, or he got caught up in what she was saying, okay, if  
20 that is what she is saying, that is what I did, right, but he  
21 didn't, right?

22 He got a name from a list from a company that sold her  
23 a website and a business corporation setup, and that is where  
24 he got the lead from, right? So he was wrong, but she was sold  
25 the product before, and that is where he got the lead and that

IB6JKET2

Summation - Mr. Schmidt

1 is when he spoke to her.

2 You heard her on there, and she was clearly, she was  
3 actually very coherent, but her memory wasn't so good and she  
4 admitted it, and Andrew made it clear that if the person  
5 sounded like they didn't want it, he wouldn't sell it to her.  
6 It is Andrew telling you she didn't sound like that when he  
7 sold it to her, and I just want to play that clip over again,  
8 the one the government pointed out, and I pointed out that  
9 they're trying to make it sound like they're putting one over  
10 on Charlene. Would you play that clip.

11 (Audio played)

12 When he told her that, he testified to that, but more  
13 importantly, this is a conversation he is having with Arash  
14 Ketabchi. This is not a sales conversation. This is not a  
15 conversation trying to look at what is best or important; this  
16 is talking to one of these aggressive, not great guys who is  
17 his boss. You heard his tone that he was trying to say no, no,  
18 that this is okay because of this. That's the man, that is the  
19 man who is now and was Andrew Owimrin. He was explaining in a  
20 tone of voice to his boss why it was all right and we're doing  
21 nothing that is a problem.

22 So, yes, it sounds like \$20,000, oh, and, yes, \$20,000  
23 like this, all right, but it is still consistent with what he  
24 has been doing. It may be a mistake and, indeed, probably  
25 should have been refunded, but he doesn't control that. All he

IB6JKET2

Summation - Mr. Schmidt

1 knows was a couple of weeks later the money he got for his  
2 commission he had to give to Arash Ketabchi, and he had nothing  
3 else to do with this.

4 If Andrew was the boss, the money would have went back  
5 to her, and we know that she also was confused because Andrew  
6 was not the one who said he can go out and you can check the  
7 mails, obviously, because he had nothing to do with it. He  
8 didn't sell something that would cause you to do that.

9 She didn't even remember it was her that put the  
10 charge-back in only a few weeks afterwards. The family didn't  
11 find out, see the papers until months later. So she knew that  
12 she was getting these phone calls from people who were going to  
13 coach her, going to help her, who know the business.

14 She is telling you she's got coaching so she knows the  
15 business better, which means she knew that she was paying for  
16 something that would give her coaching. Whether or not she  
17 wanted to fully utilize it or not, she basically got the  
18 product that maybe she had no use for, maybe civilly she had  
19 every single right to get that money back.

20 We are not here in civil court. We are here in  
21 criminal court, and you have to say that he did that because he  
22 intended to defraud her of that money, and I am telling you  
23 this isn't the evidence that you can use to find that he  
24 intended to defraud her.

25 But what we do know, and I have a lot of pages on

IB6JKET2

Summation - Mr. Schmidt

1     Youngevity, is that it is clear -- I think I'm going to skip  
2     those -- it is clear that Andrew Owimrin thought that this was  
3     absolutely legitimate. This actually was a time where Bill  
4     Sinclair and Mike Finocchiaro also thought this was actually  
5     legitimate and he could do it, that it would work. They got a  
6     product that they all get money, they all get charge-backs, but  
7     the money they will make money and get charge-backs and they'll  
8     make more money because everything they sell they get a piece  
9     of.

10           If you think you're going to make the money from  
11     people they sell they get pieces of, you think they're going to  
12     sell. You think this is going to work. In fact, it did work  
13     for many, many people, and the biggest problem they probably  
14     had was that they couldn't get the websites going when they  
15     were supposed to because they were supposed to get it in two  
16     weeks so the money could flow 60 or 90 days later. Flow can be  
17     a little bit at first, it can be more, it could not nearly be  
18     as much as people thought, it is possible, but they thought it  
19     was legitimate, and that feeling, that information, that belief  
20     was passed onto Andrew Owimrin when he was selling it.

21           We have no defense if you say that selling Youngevity  
22     with the promise, as the contract for Mr. Freeland says, that  
23     60 to 90 days after it is set up, the website, the first check  
24     is going to come, and I submit to you that was no question an  
25     honest attempt at sales of Andrew Owimrin.

IB6JKET2

Summation - Mr. Schmidt

1 Now, we're going to talk about Diane Weissenberger.

2 THE COURT: Actually, how much longer do you have,  
3 sir?

4 MR. SCHMIDT: About half an hour, 45 minutes. If you  
5 want to take a break now, your Honor --

6 THE COURT: No. You really think you have a half  
7 hour?

8 MR. SCHMIDT: I am trying to be honest, your Honor.

9 THE COURT: Yes, I understand. I would like you to  
10 finish. Go ahead.

11 MR. SCHMIDT: Diane Weissenberger --

12 THE COURT: Is it all right if we keep going, jury?

13 THE JURY: Yes.

14 THE COURT: Okay.

15 MR. SCHMIDT: -- now, she kept her money in. Let's  
16 get one thing clear. The first sale that was made from the  
17 company that Andrew was working at at that time, I am asking  
18 you to ignore the names of where the credit cards came out of  
19 because they were being used simply so they can charge cards on  
20 that, and while, yes, it is sort of not great, I know sometimes  
21 I get a credit card, my wife says to me what is that? And the  
22 name means absolutely nothing to me, I will Google it to find  
23 out what it was, oh, it is a restaurant.

24 Using a credit card name is not the greatest, but I  
25 don't think that means much here. She bought Youngevity.

IB6JKET2

Summation - Mr. Schmidt

1 Nowhere is there anyplace indicated that she did a charge-back  
2 on Youngevity. There is none whatsoever. Now, the big issue,  
3 though, is supposedly he is selling twice Corporate Credit.  
4 Well, sloppy is not really a crime, though sometimes we think  
5 it should be a crime. He was in one company and then he was in  
6 another one, so that can happen.

7 But more importantly, the original sale was either  
8 13,999 or 14,999, there is some confusion there whether it was  
9 one or the other. The records that we have that has been put  
10 in evidence for that sale show a sale at \$9,999.00. She was  
11 not charged for the full amount. She put in that COS, right,  
12 for -- that's how much was charged for that sale. She put the  
13 COS for \$5,000.00. That is a refund.

14 So basically a third of that sale she did not get  
15 charged for. One of the three things that here was Corporate  
16 Credit, so if she didn't get charged for it, she didn't get  
17 charged for the Corporate Credit, take it out, then it is not  
18 double-charging on October 7th when Andrew made a sale of that  
19 and some other items.

20 Now, this was an unusual case to me because he's at  
21 one company for the first sale and another company. He has  
22 different names. That is because he changed his name from one  
23 company because he went to a different company and he did not  
24 want to get confused with the company he was working for  
25 before. It is also because of all these future sales, but what

IB6JKET2

Summation - Mr. Schmidt

1 is clear is that she did not get double-charged for the  
2 Corporate Credit.

3 That us not the only thing that happened to her. She  
4 said that Andrew sold her and made a promise that she was going  
5 to -- I take that back -- it wasn't a promise. It was one of  
6 those spin things. She had a goal of a hundred thousand  
7 dollars, six figures, in one year.

8 Now, we've heard everybody talk about Youngevity.  
9 You've heard the Bill and my talk about it, right, and when  
10 asked and pressured, they say some people made 200, 100, 400,  
11 \$800.00, you know, there is no place where anybody would have  
12 room for saying within a year Youngevity is going to make six  
13 figures. It is just ridiculous. There is no way that the  
14 Youngevity salesman could possibly have said that and, in fact,  
15 there is no charge-back for that sale.

16 The products he sold when he went to A1 were not  
17 products that make you money. These are products that help  
18 whatever is in existence run better and maybe make money easier  
19 and protect you. What we do know from her purchases is that  
20 she purchased before anything from Andrew, she purchased things  
21 that were related to selling merchant processing.

22 This is one of the things that we get and we can never  
23 see. It is a lead list, right? And eventually it will get  
24 large enough so you can actually read where it says Diane's  
25 name on it, right, and it is a lead list which shows Diane

IB6JKET2

Summation - Mr. Schmidt

1 spent money at a merchant processing company.

2 They'll figure it out. While we're waiting to figure  
3 it out, the information that came out where that she got  
4 \$7,500, she paid for 700 leads on September 2nd. \$5,000.00 she  
5 paid for a thousand leads on September 9th, right?

6 We see sales to Elite, which is billed as Hierarchy  
7 and, yes, guess who also is involved in this, a name I want to  
8 come back to, Emily Miller, First Trend, Emily Miller, the  
9 merchant processing lady.

10 It is clear that what Andrew sold both while he was at  
11 Olive Branch and at A1 were the products that he normally sold.  
12 He did not sell -- you know, the business plan, et cetera -- he  
13 did not sell merchant processing. He testified he had no idea  
14 about it and there is no evidence that he did. It is the land  
15 of Emily Miller sells merchant processing.

16 So while she has a right to be happy, Andrew sold  
17 products, one, that she didn't get a cancellation or call back  
18 on or the other one was supposed to help her merchant  
19 processing. And again, he does not know that fulfillment --  
20 excuse my language -- sucks. He doesn't get the email from  
21 them that is telling them the problems, we are having problems  
22 with this person, we are having problems with fulfillment. He  
23 does not get those emails. He is not part of that, and even  
24 though they may say oh, it was a small office, there is no  
25 evidence that he got that information.

IB6JKET2

Summation - Mr. Schmidt

1           Now, we are moving to -- and no personal insult is  
2 meant -- the elephant in the room, Jane Thompson. In reality,  
3 Jane Thompson really is only different because of that last  
4 sale or the second to last sale, the \$149,000 sale that was so  
5 big. That is really the only reason she is different and I'll  
6 explain to you why. She first purchases a whole bunch of  
7 stuff. She has a history of buying things a couple of years  
8 earlier where she has a website. She is getting a bunch of  
9 things.

10           Then it comes time where she gets contacted by one of  
11 the people at Tristar, I think it is, and they see -- and  
12 ultimately, Emily Miller appears. Can we have Photo 705 up.  
13 There she is. She appears. You have Jane Thompson who is  
14 hesitant, has spent the money. The name of the first buyer  
15 from that company who wants her to spend, Emily comes in and  
16 she gets that \$50,000 out of her like that, that KB Consultant.  
17 Can you put up the KB Consulting check perhaps.

18           What does she actually say about KB Consulting when  
19 she's asked? The transcript. She says what is KB Consulting?  
20 I have no idea. Was this for merchant terminals? I think so.  
21 Actually, basically she sends the money because Emily told her  
22 to.

23           What is really clear, and you can look at her book,  
24 and she has that really good book, and you know a lot of that  
25 wasn't supposed to -- when that came in, we both agreed to let

IB6JKET2

Summation - Mr. Schmidt

1 that in, it helps us. It helps us show the number of places  
2 where there is, indeed, merchant terminal notes. Thank you.  
3 You're faster than me.

4 These are just an assortment. It is in evidence and  
5 you'll be able to see it. This is just an assortment of notes  
6 she has in her books, you can see the different pages of  
7 merchant processing before she has any conversation with Andrew  
8 about it. The timeline for her is quite important. So Emily  
9 Miller, right, sells her that \$50,000, which is for terminal or  
10 terminal processing or whatever it is, I never learned it, now,  
11 she's doing what apparently this big scam does, moving somebody  
12 who has money over to somebody who else, and, yes, Andrew, this  
13 is one of the few emails he gets that says yes, she has money.  
14 No question about it, he knows she can afford it, all right?

15 It could be that she can afford it, but it would be  
16 okay, I have a good one now I can sell good products to, it is  
17 still not fraud because he has the products that he believes  
18 and understands are real. What does Andrew sell the first  
19 time? Well, first he talks to her on December 16th. She  
20 doesn't buy it. Most of the time as we learned in this, you  
21 talk to the customer right away and you try to make the sale  
22 right away. Why doesn't she? Because she talked to Emily  
23 Miller before she wants to spend money, all right?

24 And then she spends the money on the 17th, and we know  
25 Emily Miller has been talking to Arash Ketabchi, one of the

IB6JKET2

Summation - Mr. Schmidt

1 lead people. That is what he sells. There is no surprise.  
2 This is no shock. This is the kind of stuff that he sells, and  
3 he is clearly selling it to her for her prior businesses  
4 because she has a lot of businesses, she has the new business,  
5 the merchant processing and the older businesses that she has.

6 Next, and there seems to be -- the next thing she does  
7 is speak to fulfillment immediately the next day, and, hey,  
8 fulfillment the next day, thank you. And so she speaks to  
9 fulfillment, she is doing and writing out things that are not  
10 things that I don't want to do anything at all. Oh, she  
11 doesn't want to have to keep on making phones calls and stuff  
12 like that, but she wants to know about the business, she wants  
13 to know what is going on.

14 So the next time she has real contact not with Emily  
15 Miller, who she speaks to her three, four, five times a day,  
16 especially every time that she is thinking about spending  
17 money, right? She really doesn't speak to anybody at A1 until  
18 she has this conversation, she has this conversation with  
19 Connor and she buys a package of things to make her business  
20 better. These are the kind of things that they sell. These  
21 are the kind of things that they think is real, that would,  
22 indeed, help a business. Is it overpriced? Yeah, I'm sure,  
23 right? Is it real? Yeah. So that is the 29th.

24 So what happens then?

25 THE COURT: Mr. Schmidt, let's leave that question

IB6JKET2

Summation - Mr. Schmidt

1 hanging, what happens then, and I'll give the jury a 10-minute  
2 break. 10 minutes, ladies and gentlemen.

3 (Jury excused)

4 THE COURT: 10 minutes, please, and we'll have a  
5 sidebar in 10 minutes.

6 (Recess)

7 (At sidebar)

8 THE COURT: First of all, I've drafted a verdict form,  
9 and Ms. Blakely will hand out copies. Let me know if there is  
10 any objection. I think it is fairly straightforward.

11 Juror No. 13 has been, and when the jury was chosen,  
12 he said he had a doctor's appointment on Tuesday and he had to  
13 leave by 2:30, and he has raised that a number of times with  
14 Ms. Blakely. Apparently it took him months to get this. He is  
15 No. 13. I think the jury will get this case either late this  
16 afternoon or tomorrow morning. I think it is appropriate that  
17 I let him go at the lunch break.

18 MR. SCHMIDT: No objection.

19 THE COURT: There is just a little risk, but we still  
20 have No. 14.

21 MR. SCHMIDT: No objection.

22 MS. FLETCHER: No objection.

23 MR. PAUL: No objection.

24 THE COURT: What I am going to do in an abundance, I  
25 won't formally excuse him, but I will explain to him, and you

IB6JKET2

Summation - Mr. Schmidt

1 will be here, that he doesn't have to come back.

2 MR. SCHMIDT: Okay.

3 MS. FLETCHER: On the verdict form, we have actually  
4 been exchanging versions of a verdict form and we have an  
5 agreed-upon form.

6 THE COURT: Have you shared it with me?

7 MS. FLETCHER: We have not.

8 MR. SCHMIDT: It was going to be a surprise, Judge.

9 MS. FLETCHER: We do have one we are happy to provide  
10 the court.

11 THE COURT: If you have an agreed-upon form, let me  
12 see it, and I won't give you my form, but my form is really  
13 good!

14 MS. FLETCHER: We may prefer your form.

15 THE COURT: No. Let me see the agreed-upon form. If  
16 I believe it is accurate, it will be fine. Can somebody favor  
17 me with it now?

18 MS. KEARNEY: I'll go get it.

19 (Off-the-record discussion)

20 THE COURT: We're done, Mr. Reporter.

21 (In open court)

22 THE COURT: All right. Bring the jury in.

23 (Jury present)

24 THE COURT: Please be seated. Mr. Schmidt, you may  
25 continue, sir.

IB6JKET2

Summation - Mr. Schmidt

1 MR. SCHMIDT: Thank your Honor.

2 Now, we were talking about the normal things that Al  
3 or Andrew were doing, the two packages that were sold were  
4 normal packages that he would sell. We can see even here now  
5 the day before, the packet sold by Connor, right, she is still  
6 checking out and doing everything related to the package that  
7 Andrew sold her. There is no mistake. Obviously, not a  
8 merchandising processing, nothing to do with it, all right?  
9 And then on the 29th we showed you that, that was the other  
10 package for the other products, right?

11 It is clear that Ms. Thompson spoke to Emily Miller  
12 all the time. We don't have, unfortunately, those records, but  
13 we know from her testimony she spoke to her all the time,  
14 especially any time that any kind of money was going to be  
15 spent.

16 (Continued on next page)

17  
18  
19  
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25

IB68KET3

Summation - Mr. Schmidt

1 MR. SCHMIDT: In fact, she said that, while she was on  
2 the telephone on the 29th, that she was speaking to her while  
3 she was signing the contract.

4 You see at the bottom she was signing the page.

5 So it is very clear that has constant conversations.

6 Now, December 29, Connor or Reagan sold the last  
7 product that Al sells. Andrew sold one set of products, Connor  
8 sold the other set of products. They are done.

9 However, it appears that Emily and Arash are not  
10 satisfied because they know she still has a lot of money. So  
11 what happens?

12 Let's put up the phone records of Andrew Owimrin and  
13 Brooke Marcus.

14 You see. These are the cell phones. It doesn't mean  
15 it's every single phone call, but after the major stuff is done  
16 they are going to be communicating on cell phones.

17 Look at February 4th and 5th.

18 Excuse me. I take it back. Look at January 4th and  
19 5th on the left-hand side. Look at all those calls.

20 Why would Emily be trying to talk to Andrew Owimrin at  
21 that time? It's because she has come up with the next plan.  
22 Andrew, there is no way, there is no evidence, there is no  
23 understanding, there is nothing showing that Andrew Owimrin  
24 would come up with a plan to sell merchant processing. He has  
25 never sold merchant processing. They have showed no evidence

IB68KET3

Summation - Mr. Schmidt

1 that there was any merchant processing he was involved in.

2 The only time he ever sold a product was Youngevity.  
3 So who is coming up with that. I submit to you based on  
4 Andrew's testimony on this and a little bit of Jane that it's  
5 Arash and Emily Miller coming up with the idea we have got to  
6 sell something else so we can take her money.

7 You know, there is no question in my mind that Emily  
8 Miller and likely, but I don't know, Arash Ketabchi were  
9 looking now to go after Emily Miller. Up to that point this is  
10 a normal, regular sale for Andrew Owimrin. But Andrew Owimrin  
11 doesn't sell anything.

12 So he gets all of these calls. And he testified that  
13 on the 5th, literally minutes after the last call at 7:28,  
14 three minutes, 7:36 he calls Jane Thompson. Jane Thompson  
15 calls him back. Eight minutes. That is Andrew Owimrin's  
16 feeble attempt to sell merchant processing.

17 Put up his testimony, please.

18 How did that conversation go?

19 One of those conversations where they asked how it  
20 went and his answer was: Bad. If you can't find it here, you  
21 will find it in the transcript. It went bad. It went bad  
22 because Jane Thompson knew more about merchant processing than  
23 Andrew Owimrin. She has purchased it. She had many  
24 conversations -- and it was in her book. She had many  
25 conversations before and there are ones in her notes after with

IB68KET3

Summation - Mr. Schmidt

1 other people that she had a number of conversations with others  
2 about merchant processing and she knew it more. And that went  
3 bad.

4 So what is the result?

5 Please put up Andrew Owimrin/Brooke Marcus telephone  
6 calls.

7 There were calls and calls and calls from Emily to  
8 Andrew, him returning phone calls, and very likely between  
9 Emily and Arash. Look at all of those phone calls.

10 And what do we have in her notes about conversations  
11 that she had with Jonathan Stewart, Andrew Owimrin, subsequent  
12 to that date?

13 We have one on January 8th. It is a reminder to her.  
14 It clearly is not the time she spoke to him. What is she  
15 asking about? The LLC. What else is she doing? Fulfillment.  
16 That is the stuff that Andrew Owimrin knows about. That's the  
17 stuff that she does.

18 The next time she speaks to him, we have it on the  
19 19th of January.

20 Go back and show the list of telephone calls between  
21 Andrew -- it's not on it.

22 Obviously the 19th is the call to the landline.  
23 Clearly there is not lots of conversations going on, because if  
24 you really get somebody and you can't get them on the landline,  
25 you give them a call on the cell phone.

IB68KET3

Summation - Mr. Schmidt

1 Go back to that call.

2 So finally they get hold of Andrew and Andrew, with  
3 Emily Miller -- Emily Miller is on that phone -- they persuade  
4 Jane Thompson to buy a single merchant processing terminal.

5 Now, Ms. Thompson says it's Andrew selling. And there  
6 is no question that Andrew has to initiate that conversation  
7 because Emily doesn't want to be the one who is selling it,  
8 because she is sort of there but she is not the seller but she  
9 is the one who knows what is going on. She is the one who is  
10 having this nice conversation about merchant terminal and how  
11 much you can make because Andrew still has no clue about it.

12 Do you have 1193?

13 Here again the conversation -- the testimony. Again,  
14 that's like it. The calendar is like it. When he doesn't know  
15 what it is, somebody else takes over, and the person who took  
16 over here was Emily Miller.

17 I need to go back a second. I forgot this one. This  
18 is important.

19 After this January 5 telephone call, where Andrew says  
20 that it went bad, what does Arash and Emily do? Emily confirms  
21 that Andrew was a mess, and she is saving the phone call  
22 because that's what she does. And Andrew was a mess because he  
23 doesn't know damn about merchant processing.

24 Now on January 20, because clearly Andrew is not  
25 capable of selling merchant processing, he's not capable of

IB68KET3

Summation - Mr. Schmidt

1 doing beyond what he knew he was able to do, which was to sell  
2 those products, the ones he knew he believed were real, the  
3 ones he believed would help people, the ones that he believed  
4 that was appropriate, Zach Peterson or Arash Ketabchi comes in.  
5 And there is a multiple conversation there with everybody. And  
6 he has a conference call on the 20th.

7 Also, if you look on the top also, she is still  
8 working out with Steve Blake about those merchant processing  
9 things that she is involved with. And she is still working out  
10 on January 26 and January 27 with other people concerning the  
11 same kind of stuff, more merchant processing. She knows the  
12 merchant processing field. She has learned it. She doesn't  
13 know as Emily Miller, but she knows it much better than  
14 Jonathan.

15 Then we are up to the February 3rd. Now, if you look  
16 at this, you have some separation here. Jane Thompson says  
17 that it was Andrew Owimrin she talked to about the sale of the  
18 business and the money. Andrew says that he talked to her  
19 about the terminals, three, and then gave the phone to Arash.  
20 And that is the next portion of it.

21 Now, this is again, without these notes, there is no  
22 question that it would be impossible for her to remember who  
23 she is speaking to exactly. It's clear from her testimony that  
24 without the notes it would be an impossible timeline.

25 This is the only thing that she has, and this does not

IB68KET3

Summation - Mr. Schmidt

1 say that she spoke to Andrew Owimrin at that time. She is  
2 interpreting it. She is interpreting it because Zach Peterson  
3 is not sitting there, Andrew Owimrin is sitting there, and that  
4 makes it easy. And I submit to you that she is just wrong.

5 Now, more importantly, Andrew said he sold three  
6 terminals, \$150,000 with all of the normal packages in there.  
7 It's an awful lot of money. It's tremendous. It's ridiculous.  
8 \$50,000 was a number set by Elite back in the beginning on  
9 September 11, a check that went to BK Marketing or whatever  
10 that company was. That was what he was told. \$50,000 per  
11 terminal, and that was the number. And they threw in all the  
12 other things that were sold for the other company. They put it  
13 all into this company as well that she gets the benefit of it.

14 He has never dealt like that. Arash finalizes it and  
15 then he finds out that he also threw in 20 percent of the  
16 business.

17 Now, I don't know if that was needed for her to make  
18 the deal. Perhaps. But what it seems to me is that even if  
19 Andrew learned about that afterwards, Al Business was making  
20 money. Arash was making money. So if he sold 20 percent of  
21 the business, the residuals to her, if Arash was an honest  
22 businessman making an honest deal, she was going to get money  
23 from that. She was going to get 20 percent basically of the  
24 residuals, which would mean 20 percent of Arash as the owner's  
25 amount.

IB68KET3

Summation - Mr. Schmidt

1           If Arash wasn't an honorable person, we might not even  
2 be here because she might have been receiving 2, \$3,000 a month  
3 or more through the sales of A1. But we have certainly learned  
4 here that Arash Ketabchi is not an honorable man. And Andrew  
5 Owimrin by April wanted to get out of there and work with Bill  
6 Sinclair with forwarding stuff and got out of there.

7           But it's easy to say, if you're having a conversation  
8 at home, that Andrew did some bad things. I am not going to  
9 argue with that. I may disagree, but I am not going to argue  
10 with you. That's not what we are here for. We are here for  
11 the government having to prove beyond a reasonable doubt that  
12 the things that happened here were not only fraudulent but  
13 Andrew joined other people with the knowledge and the intent to  
14 defraud people. Andrew Owimrin did not have that kind of  
15 intent.

16           The government did point out one other thing about the  
17 last check for \$10,000 for income tax. The previous tax  
18 agreement was in existence for the companies that existed  
19 before those three terminals. And actually in Andrew's logic  
20 he asked for \$30,000 because the terminals were going to be  
21 three separate businesses. So as he believed he was going to  
22 charge \$10,000 for each business for the taxes, but because he  
23 spent so much money he was told you could give it to her for 10  
24 or \$20,000. But that was consistent with what he was doing,  
25 how he thought it was supposed to run.

IB68KET3

Summation - Mr. Schmidt

1 I know it makes us feel uncomfortable to hear those  
2 numbers about it, but that's still what he was taught that he  
3 thought was real.

4 Andrew Owimrin testified. That's part of the case.  
5 That's part of what you are going to judge. He knows he is  
6 being accused of the crimes. He knows that you are going to  
7 look at him differently than everybody else because he is  
8 accused of the crimes. But compare him with Bill Sinclair.  
9 Even compare Michael Finocchiaro with Bill Sinclair. Michael  
10 wasn't the most forthcoming, but he wasn't Bill Sinclair. And  
11 he agreed with me when I would question him eventually coming  
12 to the point of yes. Bill Sinclair was a completely different  
13 animal on the stand. He was slick. He was good at answering.  
14 He was able to use words. He was able to spin. That is a  
15 dishonest person.

16 Andrew, and you saw him, the judge asked him  
17 questions, it sounded like, and he explained, no, I would sell  
18 anything that the company asked me to sell, but if I didn't  
19 know about what it was, I would let somebody else do it. There  
20 are so many examples of him testifying in a way that we only  
21 hope that people who come before us would talk to us. And I  
22 think that alone should make you comfortable to say this is not  
23 a guy who would knowingly and intentionally participate in a  
24 fraud.

25 One thing I forgot. They put in lots of complaints

IB68KET3

Summation - Mr. Schmidt

1 from other people for the state of mind of Shahram Ketabchi,  
2 for basically what he saw. His lawyer will talk about it. It  
3 didn't come in as to Mr. Owimrin and you're not supposed to  
4 consider it for him, but I want to give an example of one of  
5 them and you can take a look at it.

6 Mr. Waldrup, who is Government Exhibit 235. She made  
7 a complaint and the complaint goes from -- she is talking about  
8 residual income and processing. And we know that doesn't come  
9 from Al or Element or any of those companies. That comes from  
10 something like Tri-Star, and Tri-Star should be familiar to  
11 you. Tri-Star is another name of the company for Emily Miller.

12 So you have someone who is making a claim they want a  
13 chargeback for Element for something that Element had nothing  
14 to do about it. That's just one example that, going over  
15 everything I noticed it. There are probably more examples.

16 I am thankfully for you just about done. I covered a  
17 lot. I tried to cover everything that I thought was important.  
18 Andrew testified, answered my questions, answered the  
19 government's questions, tried to cover everything he could when  
20 he testified.

21 The government is going to have that last chance and  
22 they may raise something that I want to so badly get up and  
23 answer, but I can't. It's not my role to do so. I'm not  
24 allowed to. I will get into trouble.

25 You should be armed right now with the ability to

IB68KET3

Summation - Mr. Paul

1 think, what would Mr. Schmidt say if he had an answer for that?  
2 You are armed to understand what we are saying that has not  
3 been proved, what we are saying is the person who Andrew  
4 Owimrin is. You should be able to answer any question that is  
5 raised, whether by the government in their second summation or  
6 by another juror in the jury room.

7 The government started out their case saying this is  
8 simple. In some ways there is a lot of simplicity. It's  
9 simple if you make a determination of this case about Andrew  
10 Owimrin, whether you think after everything you know that  
11 Andrew Owimrin is a shyster, is a fraudster, a person who wants  
12 to steal and cheat from little old ladies. I submit to you  
13 that that should be the simple and easy question. And that  
14 question should be there is no way I am persuaded of that. And  
15 then it makes everything so much easier. You vote not guilty  
16 for two of the counts that he is charged with.

17 Thank you very much.

18 THE COURT: Thank you, Mr. Schmidt.

19 Ladies and gentlemen, now we will hear the summation  
20 from Mr. Paul on behalf of Shahram Ketabchi.

21 MR. PAUL: Good afternoon. I am sure you will be  
22 pleased to note that we are on the homestretch. So my  
23 summation will take us probably to about the lunch break so I  
24 only ask that you attempt to listen as carefully as possible.  
25 When your stomachs start growling that you try to ignore that.

IB68KET3

Summation - Mr. Paul

1 It may be difficult.

2 Let me begin my summation by simply joining with the  
3 court, and I am sure all counsel, in taking this opportunity to  
4 thank you for serving on this jury.

5 Just like you watch us throughout the trial, we watch  
6 you. And I couldn't help but notice that for the most part you  
7 have been a very attentive jury. This is not an easy case to  
8 pay attention, be careful to what you're listening to, and  
9 applying the evidence as it's presented. We have told you that  
10 there are two trials going on. As I mentioned in my opening  
11 statement, being a juror regarding one trial is difficult  
12 enough regarding one defendant, but when you have two separate  
13 trials going on, it makes your job that much more challenging.

14 You may also ask for any testimony during this trial  
15 that has taken place. That is your right when you're  
16 deliberating. You will have all of the exhibits available to  
17 you as you deliberate. That is why when trying to review this  
18 case and summarize the evidence I have decided to keep my  
19 remarks mostly limited to the testimony as presented to you  
20 since I am sure you have probably had enough documents to  
21 review during the course of this trial without me having to go  
22 through them bit by bit. But you will have that opportunity  
23 during the course of your deliberations.

24 I just feel that you have been presented with so many  
25 documents and e-mails that if you're like me, your eyeballs

IB68KET3

Summation - Mr. Paul

1 must be popping out by now. So I am going to be showing you  
2 very few documents during my summation and only those to make a  
3 particular point or two.

4 I will assume you are not terribly sorry to hear any  
5 of that.

6 In reviewing the trial transcript I started at the  
7 beginning, which I think is appropriate, when Mr. Sobelman gave  
8 his opening remarks on behalf of the government. Knowing that  
9 what lawyers say is not evidence, nevertheless I wanted to  
10 review what the government was claiming they were going to  
11 prove to you beyond a reasonable doubt, as is their burden of  
12 proof throughout this trial, as you heard and will hear again.

13 Mr. Sobelman told you that the government was going to  
14 prove -- I emphasize prove -- that Shahram Ketabchi lied to  
15 credit card companies in order to keep the money that  
16 salespeople made.

17 Where is the proof of that?

18 I would assume that the government would like to infer  
19 or believe that is true simply based on the documents he  
20 received and forwarded to the merchants. But as you have  
21 heard, those documents were provided to him from the  
22 fulfillment people. And after he would gather them, he simply  
23 passed them along to the merchants. I would submit that is not  
24 proof in and of itself that he knew what was being sold and  
25 provided to the customers may have been based on lies from the

IB68KET3

Summation - Mr. Paul

1 salespeople.

2 In fact, as Steven Ketabchi testified himself, he was  
3 never privy to anything that took place between the salespeople  
4 and the customers and therefore was not aware as to what was  
5 specifically agreed to and what was provided beyond what the  
6 fulfillment people gave him.

7 In other words, Steven Ketabchi simply knew what the  
8 fulfillment people provided to him, usually including tracking  
9 numbers showing delivery of products, a signed contract that he  
10 would have received from the sales floor where they were kept,  
11 and proof that the products contracted were in fact sent to the  
12 customers. He then simply passed these documents along to the  
13 merchants. That's it.

14 Mr. Sobelman went on to claim in his opening that  
15 Steven Ketabchi knew, again knew, that the victims had been  
16 lied to and that none of them made money. According to the  
17 government's opening, they were going to prove that Steven  
18 Ketabchi had blamed the victims. Those were their words.

19 Where is there any proof of Steven Ketabchi knowing  
20 anything beyond what the contract stated as to what the parties  
21 agreed to? Where is there proof that he actually blamed the  
22 victims, to use their words?

23 I certainly have not seen or heard any such proof.

24 The government went on to say that Steven Ketabchi  
25 knew that the salespeople lied to the victims and took

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Summation - Mr. Paul

1 advantage of them. Where is there any proof of that? There is  
2 absolutely no evidence of that. In fact, just the opposite.  
3 Steven Ketabchi never knew what was said or transpired between  
4 the salespeople or the customers. That much is very clear from  
5 the evidence and the testimony.

6 You were told that you will see e-mails between Andrew  
7 Owimrin and Steven Ketabchi discussing the victims who wanted  
8 their money back. Where is that evidence? The only  
9 communications we heard that took place between Andrew Owimrin  
10 and Steven Ketabchi was the testimony we heard from Andrew  
11 Owimrin, where he said he communicated with Steven Ketabchi a  
12 few times, and then it was only to pass along Arash Ketabchi's  
13 tax documents and to discuss gift baskets to be handed out to  
14 various customers.

15 This simply corroborates evidence of the tasks that  
16 Steven Ketabchi told you he always had done for his brother.  
17 Does that sound like discussions between Owimrin and Ketabchi  
18 about the victims wanting their money back? I don't believe  
19 so.

20 You were also told that you were going to hear from  
21 some -- I emphasize the word "some" -- of the defendants'  
22 partners in crime. In other words, co-conspirators. As I  
23 recall, the government only called at this trial one  
24 co-conspirator, who had a cooperation with the government, and  
25 that was Bill Sinclair.

IB68KET3

Summation - Mr. Paul

1           It was I who called another cooperating witness, who  
2           had in fact entered into a cooperation agreement with the  
3           government, to the witness stand. Even though, again, I have  
4           absolutely no burden of proving anything since, as you know,  
5           that burden always remains with the government.

6           I called Michael Finocchiaro. And why did I call him  
7           as my witness? I thought it important that you hear from him  
8           and hear what role, if any, Steven Ketabchi played in any of  
9           this so-called scheme. As he and Bill Sinclair both testified,  
10          it was not much of a role at all, if any.

11          You heard from Michael Finocchiaro that Steven  
12          Ketabchi's role was exactly as Steven Ketabchi himself told you  
13          in his testimony. He was given the task of responding to  
14          chargebacks by his brother, Arash Ketabchi, when Arash Ketabchi  
15          went to start his own floor, namely, A1.

16          Since Steven Ketabchi was so out of the loop regarding  
17          this telemarketing business, Arash Ketabchi had told both  
18          Michael Finocchiaro and Bill Sinclair to help him learn what  
19          had to be done when responding to chargebacks. Does that sound  
20          like someone who is familiar with the business, who knew  
21          nothing when it came to anything, including chargebacks when  
22          given the task?

23          Does that sound like Steven Ketabchi was anything more  
24          than what he told you. He was equivalent to a low-level clerk.  
25          Someone who both Sinclair and Finocchiaro told you had no idea

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Summation - Mr. Paul

1 where to even begin in responding to chargebacks.

2 The government would have you believe that since there  
3 were complaints from customers that were downloaded onto Steven  
4 Ketabchi's computer, along with other documents regarding  
5 chargebacks, that somehow Steven Ketabchi must have read these  
6 complaints. Where is there proof of that?

7 The government is asking you to assume things or to  
8 conclude that simply because these documents passed through  
9 Steven Ketabchi's devices, usually from the fulfillment people,  
10 or from the floor making the sale who had the contracts,  
11 therefore Steven Ketabchi must have read them and therefore had  
12 known as well as understood what those complaints were. Why?  
13 Why is that a fair inference to make, especially after you had  
14 the opportunity to listen to Steve Ketabchi and his testimony  
15 and, most importantly, closely observed him on the witness  
16 stand and evaluated what kind of person he is?

17 He never communicated with the salespeople to learn  
18 what was promised to the customers. And there is no evidence  
19 to dispute this. He was not avoiding speaking with the  
20 salespeople to find out what was sold or promised to the  
21 customers. That was simply not something he needed to do.  
22 Simply gathering and forwarding documents to the merchants. He  
23 would not ever need to speak to the salespeople about anything,  
24 since more than likely that was something that he thought  
25 management would or should do.

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Summation - Mr. Paul

1           Similarly, Steven Ketabchi never communicated with any  
2 customers to find out what their specific complaints were,  
3 since that is something he felt was between the telemarketing  
4 floor and the customers to work out.

5           Is there any evidence to dispute this? No. He spoke  
6 to no customers, no potential clients, or victims, as pointed  
7 out by the government.

8           You observed my client on the witness stand and you  
9 can draw whatever conclusions you want to about Steven  
10 Ketabchi. But clearly I would suggest being on automatic pilot  
11 and just literally -- I emphasize literally -- doing what he  
12 was told fits exactly within the type of person you saw.

13           That brings me to Bill Sinclair. The government chose  
14 to cut a deal with -- imagine this -- with the ringleader of  
15 this entire scam operation. That's the deal that they cut.  
16 The ringleader.

17           He is not some peripheral character who was following  
18 what he thought he was supposed to do, or who was gathering  
19 papers while in his apartment in California and merely passing  
20 them on to the merchant. No. Sinclair was the head scam  
21 artist or con man. He and his partner, Michael Finocchiaro,  
22 were admittedly engaged for many years in ripping people off,  
23 starting in the days as way back as The Tax Club.

24           We learned that Sinclair is facing 60 years'  
25 incarceration for his crimes. We also learned that he is yet

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Summation - Mr. Paul

1 to do even one day in jail, except perhaps part of a day he  
2 spent while waiting to get bonded out when he was arrested for  
3 this case.

4 You can be sure that he is expecting not to have to go  
5 to jail for anything close to the 60 years on paper he is  
6 facing.

7 This, of course, is thanks to his cooperation with the  
8 government. And once the government submits that magical 5K1  
9 letter spelling out how he helped them, he could, conceivably,  
10 according to him, receive a probationary sentence.

11 Amazing. And that is exactly what he is not only  
12 hoping for, but expecting. He has not only conned countless  
13 individuals over the many years he has committed the crimes of  
14 fraud, but now he hopes to complete his biggest con of all and  
15 walk away with little to no jail time.

16 Sinclair is an admitted con man, scam artist,  
17 fraudster. You take your pick. He has made millions over the  
18 years. We heard that. Beginning in '08 with The Tax Club he  
19 has been engaging in taking advantage of many poor souls who  
20 were targeted for any number of reasons, mostly because they  
21 had money and they seemed to be easy targets to depart with  
22 their money.

23 This guy couldn't decide how to come across to you,  
24 the jury, or the judge, Judge Stein, who happens to be his  
25 sentencing judge. On the one hand he admits to selling

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Summation - Mr. Paul

1 products that have absolutely no value, such as the grants that  
2 we have heard so much about. And on the other hand he tries to  
3 come across that there were so-called lines even he, the  
4 biggest scam artist of all, wouldn't cross.

5 The only reason he wouldn't cross them really came  
6 down to what we heard, money. Clearly not because he had any  
7 conscience or moral awakening. He and someone like Michael  
8 Finocchiaro, they have no morals. They have no conscience.

9 Regarding the grants, for example, Sinclair testified  
10 that selling them was crossing his so-called imaginary line  
11 because he knew the customers were going to get absolutely  
12 nothing in return for their investments. However, crossing the  
13 so-called line was not so terrible in his mind if it could make  
14 him and his company money. So what did he do regarding setting  
15 up this sham grant program? He brought some of those  
16 characters, who were selling these grants in Arizona, over to  
17 his New Jersey office to continue selling this very product.

18 If there was money to be had, he was all in. If not,  
19 he would shut it down. And it became clear in his testimony he  
20 only shut down the grant program, even though it had, according  
21 to him, crossed this imaginary line, when there was  
22 money -- when money became an issue. He attempted to sell  
23 these grants for a month before shutting the operation down,  
24 and that was only due to a money issue.

25 You can be sure if it was a money maker, he would have

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Summation - Mr. Paul

1 continued, no matter how many customers were hurt by investing  
2 in these grants.

3 You may recall I asked him about other so-called  
4 imaginary lines he had, and he told you as an example there was  
5 a maximum amount of money to hit any unsuspecting customer up  
6 for. First he said it was \$15,000. That was the maximum.  
7 Then when I asked him, well, what about up sales, what does  
8 that do? Well, then we learned it raised it another \$10,000.  
9 So we are now up to \$25,000.

10 Then I asked him about this so-called debt reduction  
11 program that we heard about, which he started at Olive Branch.  
12 And the figure was then raised to \$25,000.

13 Just think about this so-called debt reduction program  
14 he initiated, and that tells you the true story about someone  
15 like Bill Sinclair. It is really ingenious if you're someone  
16 like Sinclair or Finocchiaro. Think about it. From the  
17 standpoint of their criminal minds, both Sinclair and  
18 Finocchiaro, this was a perfect scam. Here they had many  
19 customers who were people that had already been scammed,  
20 already been scammed, by Olive Branch, and have lost in some  
21 cases significant amounts of money.

22 So what do they do? Well, this idea occurs to them  
23 that they came up with. Let's go after these customers again.  
24 Why not? They are in debt. Thanks to us. So we will kick  
25 them while they are down. They need to reduce the debt that we

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Summation - Mr. Paul

1 caused. Why not. Get them for the sale. Get them up for the  
2 up sale. Put them in debt and go after them again. That's the  
3 kind of people you are dealing with here. Keep that in mind.

4 This scam that they came up with was just one of many.  
5 Because there is no end to it, obviously. Do you remember the  
6 poster I asked Sinclair about that was hanging in his office?  
7 The one that was titled Integrity? Integrity. I kept  
8 thinking, are you kidding me? This was in your office. A big  
9 poster. Was this a sick joke? Or was Sinclair so entrenched  
10 in this kind of business of scamming customers that he somehow  
11 really thought this was just a regular business, trying to act  
12 with integrity?

13 He certainly knew that no matter how many of these  
14 so-called ridiculous rules he set up there was no integrity at  
15 all involved in the crimes he was committing over many years.  
16 Even he couldn't explain the contradiction with this poster and  
17 the fraud he was committing.

18 And what did Sinclair tell us about Steven Ketabchi?  
19 Not very much. He thinks he may have met him one time,  
20 perhaps, when he saw him in court, but he is not even sure  
21 about that. He confirmed that Steven Ketabchi never worked  
22 with Sinclair at The Tax Club, or for him at Olive Branch or in  
23 fact anywhere else. At no time was Ketabchi ever in the  
24 office. As Sinclair testified, Steven only became involved in  
25 dealing with chargebacks after Arash Ketabchi split from

IB68KET3

Summation - Mr. Paul

1 Sinclair and Olive Branch and thereafter started his own floor  
2 called A1.

3 According to Sinclair, if Steven Ketabchi had any role  
4 at all to play, it was limited to dealing with chargebacks and  
5 nothing more. It appeared to Sinclair that Steven had  
6 absolutely no idea how to even begin or deal with chargebacks,  
7 because Steven had reached out to both Sinclair and Finocchiaro  
8 to help them understand what had to be done to contest these  
9 chargebacks.

10 He also testified that he believed that Steven  
11 Ketabchi had no idea about the pitches his brother, Arash  
12 Ketabchi, was giving to customers. Or that Arash Ketabchi ever  
13 even told Steven Ketabchi that this operation he was involved  
14 in was a fraud. Think about that. According to Bill Sinclair,  
15 given the nature of his contact with Steven Ketabchi, that  
16 Arash Ketabchi had never told Steven Ketabchi that Arash  
17 Ketabchi was in the business of a fraud. That's exactly what  
18 Steven Ketabchi told you about his knowledge of Arash  
19 Ketabchi's business.

20 Steven Ketabchi had always thought that his brother  
21 was simply selling products and services and involved in a  
22 legitimate business. He was never told otherwise.

23 Ask yourselves, after hearing the testimony, does that  
24 sound like Steven Ketabchi had any knowledge about the fraud  
25 his brother was involved in? I would submit quite the

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Summation - Mr. Paul

1 opposite.

2           The government wants you to infer that Steven Ketabchi  
3 must have known this was a fraud based on the documents he  
4 received and then forwarded on to the merchants. You heard  
5 what Steven said about these documents. He saw himself as, as  
6 he told the court in response to the judge's own question,  
7 merely as a low-level transferor of information from one entity  
8 to another. Gathering and shuffling papers off to the  
9 merchants does not make you a knowing participant in a  
10 conspiracy to commit wire fraud. Nor does simply writing form  
11 letters in order to respond to chargebacks. Or discussing with  
12 his brother how to set up a model business plan that would  
13 work, function and succeed. None of these make you a knowing  
14 participant in a conspiracy to commit wire fraud, as the  
15 government would allege.

16           For the most part, it was not Steven Ketabchi's  
17 concern as to what was in the papers he received or what the  
18 specific complaint from the customer was about. Because  
19 according to him, that was not something he had any power or  
20 judgment over. That was management to deal with and not him.

21           When he happened to read a specific complaint, such as  
22 that which was contained in an e-mail to him, that was received  
23 from a Brian, claiming that, according to this complaint, the  
24 son was complaining that Patricia Cabral was suffering from  
25 dementia. Ketabchi tells you he recalls in this particular

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Summation - Mr. Paul

1 instance having reached out to his brother to tell him they  
2 have to review this and take care of it. Nevertheless, as we  
3 heard, several days later he filed a response to the chargeback  
4 dealing with Ms. Cabral. The government suggests that this  
5 shows Steven Ketabchi was callous and only wanted to win a  
6 chargeback at whatever cost no matter what.

7 I would suggest that this is further evidence that  
8 Steven Ketabchi is the kind of person who is constantly  
9 operating on automatic pilot, because, as he saw it, that was  
10 his job and he was told by his brother to simply do the job.

11 He wouldn't necessarily recall that when he responded  
12 to a particular chargeback relating to Ms. Cabral that was even  
13 the same person he discussed with his brother five days  
14 earlier. To him it was just another chargeback to deal with,  
15 and he more than likely wouldn't have paid any attention to the  
16 name on the chargeback.

17 When you first arrived in this courtroom for the  
18 purpose of selection for this trial as the jury, you were told  
19 what this case was about. It was easy from my standpoint to  
20 see from that reaction how negatively many responded when told  
21 this was a case about telemarketing. Many in the courtroom  
22 responded with a groan. It was almost worse than you were  
23 going to hear a case about murder. And why was that? Because  
24 most, if not all of us, have been confronted with phone calls  
25 from that anonymous voice on the other end, very pleasant

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Summation - Mr. Paul

1 voice, trying to sell something to us. How annoying are these  
2 individuals? Extremely.

3 But one's personal animosity towards telemarketers  
4 cannot cloud your judgment when considering this case. I say  
5 that because it certainly was not hard to sympathize and feel  
6 terrible for all of the customers who came here and testified  
7 at this trial. Their stories of how they ended up spending  
8 significant amounts of their money and received little or  
9 nothing in return of what they thought they had agreed to was  
10 simply awful, outrageous, disgusting. But again, you cannot  
11 let your feelings of empathy for these women interfere with  
12 your job at hand as jurors. You are here to determine the  
13 facts objectively and apply those facts to the law as Judge  
14 Stein instructs you, without letting your emotions interfere  
15 with your judgment.

16 I told you in my opening statement that I probably  
17 would not be asking many questions of any of the victims who  
18 were going to testify at this trial, and clearly I didn't. And  
19 as you can see from this list of testifying witnesses, one  
20 should be added to this, number 4 would be Ms. Foster, because  
21 she is another one who was a victim of what was going on.

22 I told you that I would not have many questions of any  
23 of these people because my client never had any contact with  
24 them, at any time. There was no evidence presented at this  
25 trial by the government to suggest otherwise.

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Summation - Mr. Paul

1           One of these victims, Ms. Jane Thompson, testified.  
2           She is someone who lost, unfortunately, a significant amount of  
3           money, by willingly agreeing to invest in any number of  
4           products or plans where she didn't have to do anything other  
5           than wait for the checks to come rolling in. One cannot help  
6           but feel sorry for what Ms. Thompson has been through, having  
7           spent and invested her entire 401-k savings. She is  
8           understandably angry, upset, frustrated for allowing herself to  
9           be pulled into spending her money with any number of  
10          telemarketing companies in addition to A1.

11           But listening to her testimony I was struck about how  
12          she allowed her anger to spill over into making improper  
13          assumptions about by client. You may remember that at one  
14          point in her cross with Mr. Mitchell she blurted out in anger  
15          that she felt that a lot of people conned her, including these  
16          two individuals. Why? Well, because they are here on trial.  
17          That assumption, though I understand was expressed out of anger  
18          and frustration by Ms. Thompson, nevertheless is exactly the  
19          kind of trap you cannot allow yourselves to fall into. She can  
20          be forgiven for being so angry and upset and wanting to take it  
21          out on anyone who may be associated in any way possible with  
22          the telemarketing business, but you cannot allow that kind of  
23          thinking to infiltrate your decision-making.

24           We know for a fact, notwithstanding Ms. Thompson's  
25          expression of anger toward anyone sitting at that defense

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Summation - Mr. Paul

1 table, that Steven Ketabchi never had communicated with her or  
2 any customer, as I said, at any time.

3 We all remember Ms. Thompson in particular because of  
4 the large amount of a check she wrote. This check that was in  
5 the amount of \$149,999. We know this because she testified  
6 about it and the government displayed it to you several times.  
7 What the government also did in relation to Ms. Thompson's  
8 contract with A1 was to introduce exhibits 161 through 163.

9 Could we show Exhibit 163, please, page 6.

10 You have seen this document. If you notice, you will  
11 see that this document indicates that Zach Peterson, who we  
12 know is Arash Ketabchi's sales name, looks to be the individual  
13 attached to the e-mail of positivefaith@gmail.com, which, as we  
14 know, is Steven Ketabchi's personal e-mail account.

15 If we had not presented to you the testimony of  
16 Brandon Jelinek, an expert in forensic analysis and IP address,  
17 you might well have been left with the wrong impression that it  
18 was Steven Ketabchi who had sent this contract to Ms. Thompson.

19 However, as Mr. Jelinek testified, he was in fact able  
20 to track down the geolocation of this particular IP address, as  
21 shown in the exhibit, and that was found to come from in and  
22 around the New York area. Clearly, clearly, it did not, as you  
23 might otherwise have been left with the impression, come from  
24 Steven Ketabchi, who at that time, as always, was living and  
25 located in California during this time, and not anywhere near

IB68KET3

Summation - Mr. Paul

1 New York.

2 Remember, it's not my burden to have to prove anything  
3 to you. But given the exhibits that the government displayed  
4 and introduced regarding the contract that was sent to Jane  
5 Thompson, and how that might have been very misleading, we were  
6 left with absolutely no choice but to present an expert to  
7 challenge that possible impression because that clearly would  
8 have been a wrong impression left with you by the government.

9 Additionally we learned through Steven Ketabchi's own  
10 testimony that he had helped Arash Ketabchi, as he did for  
11 almost everything, set up the electronic signature application  
12 through Adobe in Arash Ketabchi's name as the user and had used  
13 his own e-mail address in that application. You saw a  
14 confirmation of this application by SK-24. That's up on your  
15 screen. And that is exactly why his e-mail address is  
16 displayed in that exhibit for a document Arash Ketabchi clearly  
17 had sent under his sales name of Zach Peterson.

18 Mona Ketabchi was called as a character witness. As  
19 you heard, she is a very well educated individual who has her  
20 doctorate in psychology and two master's degrees. She is a  
21 licensed clinical psychologist. What makes her unique is not  
22 only did she tell you her opinion of Steven Ketabchi's  
23 reputation for honesty and truthfulness being excellent, she  
24 told us more. Of course you may think, well, she is Steven  
25 Ketabchi's sister. I mean, is she going to say anything bad

IB68KET3

Summation - Mr. Paul

1 about her own brother? She is only going to say nice things.  
2 She is only going to say that he is honest and truthful. One  
3 would expect that. But she also testified beyond that.

4 (Continued on next page)

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IB6JKET4

Summation - Mr. Paul

1           She testified that Steven Ketabchi has lived a moral  
2 and ethical life and has been a role model and father figure to  
3 her. Ms. Ketabchi said both Shahram Ketabchi and Arash  
4 Ketabchi are very different in many ways, and that seems  
5 obvious from what we know. She told you that it is an ongoing  
6 joke in their family about how Steven Ketabchi and Arash  
7 Ketabchi are polar opposites.

8           Steven Ketabchi is very quiet and reserved and Arash  
9 Ketabchi is very loud and outgoing. Given what we've learned  
10 in this trial about Arash Ketabchi, that makes sense; and  
11 having observed Steven Ketabchi on the witness stand, that  
12 would also make sense.

13           She told you about Steven Ketabchi's ongoing  
14 relationship over the years with his brother, Arash Ketabchi,  
15 and how Steven was like Arash's personal assistant. Since  
16 Arash, according to his sister, tends to delegate a lot of  
17 things in his life, coupled with not being very computer savvy,  
18 he would rely on Steven to do all of his daily tasks. She used  
19 the examples of booking him a ticket or applying for his  
20 insurance, similar to the many tasks Steven Ketabchi testified  
21 to on the witness stand as well as the exhibits introduced into  
22 evidence by the defense.

23           The exhibits we introduced were just a sampling of the  
24 many tasks that were done by Steven Ketabchi and Arash  
25 Ketabchi, and they were limited to the time-frame during the

IB6JKET4

Summation - Mr. Paul

1 period of the charged conspiracy. These exhibits point out  
2 examples of Steven writing letters for Arash regarding his  
3 medical condition, another letter for Arash regarding the  
4 release of Arash's license plates, or simply applying for Arash  
5 and Andrew Owimrin's insurance on their engagement.

6 Let me just go back to Jane Thompson for a minute.

7 Remember Ms. Fletcher, in addition to that exhibit I  
8 explained to you was a bit misleading with the email address,  
9 Ms. Fletcher said in her summation, and she pointed out  
10 documents that were downloaded on Steven Ketabchi's computer  
11 referring to a contract by Arash Ketabchi to Jane Thompson.

12 MS. FLETCHER: Your Honor, objection to this line.

13 MR. PAUL: I'll move on, your Honor.

14 THE COURT: All right.

15 MR. PAUL: That contract, the first contract was in  
16 the amount of \$9,995.00 and that was sent through Adobe, not  
17 sent by the defendant. That was what we just saw before, that  
18 positive faith, that was clearly we know having brought to your  
19 attention through an expert that was not from Steven clearly.

20 The second contract was sent to Jane Thompson, and  
21 that is the \$149,999.00 that we have heard so much about, and  
22 that was sent through regular mail, and you were shown by Ms.  
23 Fletcher a UPS label that was also downloaded to Steven  
24 Ketabchi's computer. This mailing label had a tracking number,  
25 as you can see. Did the government check perhaps --

IB6JKET4

Summation - Mr. Paul

1 MS. FLETCHER: Objection.

2 MR. PAUL: I don't think I got a sentence out, Judge.

3 MS. FLETCHER: It is the same objection as the  
4 objection to this line, Judge.

5 THE COURT: Sidebar.

6 (At sidebar)

7 THE COURT: I am not sure what your objection is.

8 MS. FLETCHER: Your Honor, the jury will be instructed  
9 not to consider investigative steps not taken. What Mr. Paul  
10 is trying to do is argue that the government is being  
11 misleading because they didn't take certain investigative steps  
12 or didn't present certain evidence. It is improper for him to  
13 do that.

14 THE COURT: I see. Just a moment. I understand.

15 (Pause) Yes, Mr. Paul. Mr. Paul, you do seem to be  
16 starting to say did the government check, trying to verify.  
17 Indeed, steps the government took or didn't take --

18 MR. PAUL: I'll rephrase it, Judge, to say how we all  
19 know that we can check a tracking number and determine where it  
20 was from. What is wrong with that?

21 MS. FLETCHER: The same objection.

22 THE COURT: Yes. I do think the only reason you're  
23 going to say that, you say that is so that the jury then thinks  
24 why didn't the government check the tracking number.

25 MR. PAUL: Okay. I'll move on, Judge.

IB6JKET4

Summation - Mr. Paul

1 (In open court)

2 MR. PAUL: Would you pull up that exhibit again.

3 You see there is a tracking number there, right? You  
4 also see that the return address is Al Business Consultants.  
5 That is in Wayne, New Jersey, not California. This mailing  
6 label was simply downloaded into Shahram Ketabchi's computer.  
7 It is not evidence that he sent this contract or anything else  
8 to Jane Thompson merely because he scanned and downloaded a UPS  
9 label. You can take that down.

10 The government, as I told you, called as a witness one  
11 co-conspirator who is cooperating with the government; namely,  
12 Bill Sinclair, who would, I suggest, certainly not call himself  
13 a partner in crime in any respects with Steven Ketabchi. He  
14 can't even be sure if he ever had met Steven Ketabchi, yet  
15 alone categorize himself as a partner of any kind.

16 So again though I have absolutely no burden to prove  
17 anything to you in this case, I ended up calling Michael  
18 Finocchiaro to the stand. If one is to believe the government,  
19 I suppose he is another so-called partner in crime with what  
20 was going on. He also was such a close partner in crime with  
21 Steven Ketabchi it is amazing who, too, hardly knew him, my  
22 client. He testified that he wasn't even sure that he ever met  
23 Steven Ketabchi, but perhaps maybe at a family barbecue because  
24 he knows he hung out with the Ketabchi family; and, therefore,  
25 he thinks perhaps Steven was there at one of these barbecues.

IB6JKET4

Summation - Mr. Paul

1 All he can testify about is that he came to learn from  
2 Arash Ketabchi when Arash Ketabchi left Olive Branch that he  
3 was attempting to make Steven Ketabchi his charge-back man. As  
4 he pointed out, Finocchiaro came to realize that Steven  
5 Ketabchi apparently knew nothing about charge-backs. That  
6 would logically be due to Steven Ketabchi knowing nothing about  
7 the telemarketing business. Finocchiaro was told by Arash  
8 Ketabchi to help Steven Ketabchi learn about what to do in  
9 order to respond to charge-backs because that was one of the  
10 main jobs Finocchiaro did while at Olive Branch.

11 As we heard, Finocchiaro told Steven Ketabchi how to  
12 do this. He told him that one has to gather the signed  
13 contracts from the telemarketing fraud just like he did and get  
14 the documents from the fulfillment people just like he did, and  
15 forward all of these documents on to the merchant with what was  
16 a form letter.

17 If there was a tracking number showing the items  
18 purchased that actually had been sent out to the customers,  
19 then you would include this as well, obviously. If there was a  
20 COS, Continuation of Service, he'd send that as well. Since  
21 Finocchiaro was apparently the smooth-talker in the business,  
22 he would also do what he described as saves before respond to  
23 go the charge-backs.

24 This was hopefully to avoid, according to him, the  
25 customer filing a charge-back at all. He testified that he

IB6JKET4

Summation - Mr. Paul

1 does not recall whether he told Steven Ketabchi to try to first  
2 save the deal with the customer as he would have done. In  
3 fact, we know that Steven Ketabchi never contacted any  
4 customer, so obviously Steven never dealt with any so-called  
5 saves.

6 I ask you, having observed Steven Ketabchi on the  
7 witness stand, do you honestly believe that he would have even  
8 been capable of talking with any customer and try to talk them  
9 out of filing a charge-back? I doubt it.

10 Like Sinclair, Finocchiaro tried to rationalize his  
11 scamming by claiming there was a gray area to operate in. They  
12 set up rules to stay off the radar of law enforcement and avoid  
13 similar legal problems that were occurring in the Tax Club he  
14 was familiar with. They even hired a lawyer to make it look  
15 like they were legitimate. This was obviously done so if law  
16 enforcement closed in on them, they could simply say look, we  
17 have a lawyer, we're a legitimate operation. How more  
18 legitimate can you be? Some people might think otherwise but,  
19 nevertheless, they have a lawyer to point to to cover their  
20 tracks.

21 What did this retained lawyer do for Olive Branch?

22 Among other things, we heard he handled complaints  
23 filed with any number of attorneys general offices and then  
24 would, guess what, assume he would do exactly the same things  
25 that were done to fight charge-backs. He would get his hand on

IB6JKET4

Summation - Mr. Paul

1 the contracts, he would gather the fulfillment documents and  
2 fight the claim made by the customer. Does that sound  
3 familiar?

4 MS. FLETCHER: Objection, your Honor.

5 THE COURT: Proceed.

6 MR. PAUL: Thank you.

7 Just like Sinclair, Finocchiaro is facing years and  
8 years in jail for his having committed fraud over many years  
9 and we learned as well as distributing oxycodone. He testified  
10 that in addition to the fraud he committed, he distributed  
11 oxycodone for several years, even sometimes distributed it at  
12 Olive Branch.

13 Given his cooperation with the government and this  
14 likely magical likely 5K1 letter that will sent to the  
15 sentencing Judge by the government, this major con artist also  
16 may get little or no jail time for his efforts in helping the  
17 government. Both Sinclair and Finocchiaro were major con  
18 artists and have been committing fraud against hundreds of  
19 customers for close to a decade, a decade. These are the  
20 people the government chose to cut a deal with and enter into a  
21 cooperation agreement.

22 Compare them to Steven Ketabchi --

23 THE COURT: Excuse me. Ladies and gentlemen, in  
24 regard to the last objection, I do wish to inform you that what  
25 that retained lawyer was doing is of no concern of yours.

IB6JKET4

Summation - Mr. Paul

1           The issue of whether what he was doing was legal or  
2           illegal, or permitted or impermissible, or what he was doing  
3           period has nothing to do with what your concern is here. Your  
4           concern here is whether the government has proven its case  
5           beyond a reasonable doubt against these individuals.

6           That's all. Proceed.

7           MS. FLETCHER: Your Honor, the government was about to  
8           object to the most recent thing that Mr. Paul said and I  
9           thought the court was going to address that.

10          THE COURT: Let me take a look. (Pause) Sidebar.

11          (AT sidebar)

12          THE COURT: What is your objection? He is making the  
13          cooperators into the scum of the earth, fairly standard.

14          MS. FLETCHER: Agreed. The issue the government has  
15          is with Mr. Paul's efforts to question the government's  
16          decision to give these individuals cooperation agreements and  
17          to invite the jury to compare the culpability of the defendant  
18          with these individuals who pled guilty.

19          THE COURT: Well, yes, he has just done that.

20          MS. FLETCHER: And that is the problem.

21          THE COURT: I understand. (Pause)

22          Your last words, Mr. Paul, were compare the scum of  
23          the earth to Steven Ketabchi.

24          MR. PAUL: I don't think I said that.

25          THE COURT: No, you did not.

IB6JKET4

Summation - Mr. Paul

1 MR. PAUL: I was extending it to my client.

2 THE COURT: Go ahead. What is your response?

3 MR. PAUL: Well, I was simply going to point out that  
4 they made deals with, as you pointed out, the scum of the  
5 earth, and my client who stands in this trial is involved in  
6 this in a limited basis for a matter of a few months and --

7 THE COURT: Make that argument, but not the comparison  
8 to the scum of the earth, alright?

9 MS. FLETCHER: Or the government's decision-making to  
10 offer witnesses cooperation agreements. We didn't object to a  
11 lot of the argument about that, but it is improper. The  
12 government is not on trial here.

13 MR. PAUL: I am no putting the government on trial.  
14 You chose to --

15 THE COURT: Wait, but Ms. Fletcher is right.

16 You can't make the argument why do they elect to shake  
17 hands and enter into a devil's pact with the scum of the earth  
18 when my poor guy who is not anywhere near as bad as them face a  
19 criminal trial. You can't make that comparison.

20 MR. PAUL: I will move on.

21 MS. FLETCHER: That comparison has already been made  
22 in several different ways. The government would ask for an  
23 instruction on that point. He has already smeared the  
24 government's decision to give these people cooperation  
25 agreements, called into question our decision not to call one

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Summation - Mr. Paul

1 of the witnesses. He is absolutely putting the government on  
2 trial here, and it has gone on now long enough that I think the  
3 jury needs an instruction.

4 MR. PAUL: What instruction are you suggesting?

5 THE COURT: The instruction would be that, "I am  
6 instructing you, ladies and gentlemen, that the decisions of  
7 the government here are not on trial. It is the defendants who  
8 are on trial."

9 MR. PAUL: Okay. That is fine.

10 (In open court)

11 MR. PAUL: May I continue, your Honor?

12 THE COURT: No. Just a moment. (Pause)

13 Ladies and gentlemen, I wish to instruct you that the  
14 government is not on trial here and its decisions are not on  
15 trial. It is only Mr. Owimrin and Mr. Shahram Ketabchi who are  
16 on trial. The investigative techniques of the government why  
17 certain people are on trial here and others are not, whether or  
18 not the government gave a cooperation agreement to this person  
19 or that person, those things are not your concern. The actions  
20 of the government are not on trial, all right? The defendants  
21 are on trial. Proceed.

22 MR. PAUL: Thank you, your Honor.

23 If anything, we get another stretch out of this. I  
24 apologize for some of the interruptions and I hope not to go  
25 too far past the lunch hour.

IB6JKET4

Summation - Mr. Paul

1           We talked about Sinclair and Finocchiaro and their  
2           role in this conspiracy. Steven Ketabchi was brought in by his  
3           brother in the fall of 2015 just simply to deal with  
4           charge-backs and other tasks such as drafting letters for Arash  
5           in order to help his AI business, and for how long did he do  
6           this or engage in these activities?

7           A matter of a few months, that is his involvement.  
8           You heard from Steven Ketabchi. Let me pause for a second  
9           because I want to be clear about his testifying. As you heard,  
10          a defendant such as Steven has no obligation -- or  
11          Mr. Owimrin -- to testify in their own behalf, but he wanted to  
12          because he wanted to explain to you exactly what he was doing  
13          for his brother and what was going on in his mind, most  
14          importantly, when he was fighting these charge-backs as  
15          requested to do so by Arash Ketabchi.

16          How else could you draw any reasonable conclusions as  
17          to his thought process if he didn't testify? Or his knowledge  
18          or lack thereof of the fraud being committed? Or whether it  
19          was ever his intention to be part of this wire fraud  
20          conspiracy? And those are two of the elements of the crime of  
21          wire fraud that you must find were proven to your satisfaction  
22          beyond a reasonable doubt.

23          He told you he thought this was a legitimate business  
24          from what he knew from his brother and what Arash had told him  
25          about his past employment while selling in telemarketing

IB6JKET4

Summation - Mr. Paul

1 businesses. The fact he handled charge-backs and some were  
2 actually reversed indicated to him that this was a legitimate  
3 business. Did he ever even attempt to open a merchant account  
4 or a bank account to be used in opening up a merchant account?  
5 No. However, he thought it to be part of the business to have  
6 more than one merchant account so that you could accommodate  
7 the many customers.

8 I'm not sure exactly how you should analyze my client.  
9 Let me start by saying that when you are asked to use your  
10 common sense, as you are now, in determining the facts of this  
11 case based upon the testimony and evidence presented from the  
12 witness stand, you also have to evaluate someone by simply  
13 observing them. We always do this in our every day lives when  
14 we evaluate someone we meet or in these days evaluating someone  
15 who is testifying on the witness stand. You automatically  
16 observe them and draw certain conclusions about them which goes  
17 beyond listening to just what they're telling you. You draw  
18 these conclusions about the individual simply by looking at  
19 him.

20 For an example, I don't know about you, but in  
21 observing Sinclair on the witness stand, I constantly felt like  
22 I needed to rush home and take a shower. That was my  
23 observation. You had an opportunity to watch Steven Ketabchi  
24 as he testified, and I ask your forgiveness, Steven, but what I  
25 am about to say should come as no surprise to my client because

IB6JKET4

Summation - Mr. Paul

1 we discussed this before. For starters, I would classify  
2 Steven Ketabchi as a geek, or a nerd. You would have to agree  
3 that he is clearly a bit strange or even odd, to say the least,  
4 someone who obviously takes everything -- and I mean  
5 everything -- as literally as he does is a bit strange.

6 I don't know whether any of you will go out on a limb,  
7 are aware of a classic American series of children's books  
8 called Amelia Bedelia. Amelia Bedelia is the title character  
9 of someone who takes everything very literally. As an example,  
10 if you told her that people walk in traffic, she would say to  
11 herself, okay and then go walk in traffic.

12 I also tease my wife about like Amelia Bedelia, and  
13 that is because when she listens to the GPS voice that gives  
14 instructions as you're driving and it says "make a right," she  
15 makes a right even if it means driving into someone's driveway.  
16 That is literally.

17 We saw a perfect example of how literal Steven  
18 Ketabchi's mind works when the judge asked him during his  
19 cross-examination the following, and this is from Page 1668 to  
20 1669 of the trial transcript:

21 "The Court," talking to my client --

22 "You want a definition of complaint?"

23 "The Witness: Yes, because there is charge-backs. It  
24 is customer complaints. I can't respond accurately.

25 "The Court: Well, what is the universe?

IB6JKET4

Summation - Mr. Paul

1 "The Witness: What is the universe?

2 "The Court: You said there's charge-backs.

3 "The Witness: I'm not an astronomer, but there's  
4 stars and planets.

5 The next question by the court -- and then there were  
6 a few more questions by Ms. Fletcher before the court said the  
7 following:

8 "The Court: I now realize what you were saying. When  
9 I was asking what is the universe, I meant what is the universe  
10 of complaints that you worked on?

11 "The Witness: I'm sorry.

12 "The Court: That's all right.

13 "The Witness: I'm sorry. My Star Trek mind."  
14 That is literal.

15 We all laughed at that time because it was humorous,  
16 but in another sense it is kind of sad. For someone who takes  
17 everything so literally I submit was someone who was simply  
18 following instructions to the letter and nothing more or less,  
19 so if his brother told him to do something in particular, that  
20 is exactly what he would do, nothing more or less. If he saw  
21 himself as simply a paper-pusher, then it was not for him to  
22 analyze a complaint that may have been filed.

23 As the court suggested when inquiring of Steven, he  
24 saw himself as a low-level transferor of information from one  
25 entity to another. Did Steven get paid by his brother to do

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Summation - Mr. Paul

1 these tasks and answer these charge-backs? Yes. He told you  
2 he was getting paid approximately 500 a week and certainly  
3 never received any commission like a salesperson would have  
4 because he was not a salesperson.

5 His brother, who would periodically send him loans or  
6 gifts to help him pay for his rent and other expenses because  
7 he was unable to keep up with his bills while driving an Uber  
8 and a Lyft, that is what his brother did. His bank accounts,  
9 as testified to by the government's forensic accountant,  
10 Ms. Casanova, he had both cash deposits as well as deposits  
11 from A1 Business that made into his account in the total amount  
12 of \$30,325.00.

13 The first date of any payment from A1 was on December  
14 8, 2015. That is months after his brother even opened his 401  
15 (k) and asked Steven to handle the charge-backs. I asked Ms.  
16 Casanova to subtract the cash deposit totals, leaving the  
17 amount received from A1, and she told us that Steven Ketabchi  
18 was left with a total of approximately \$20,000 from A1 over the  
19 course of more than a year.

20 Given the significant money that these frauds were  
21 making as we heard from Sinclair about the many millions he was  
22 grossing, but certainly not paying his taxes, does the amount  
23 of 20,000 sound like Steven Ketabchi was receiving much more  
24 other than loans from cash paid through the A1 account over the  
25 course of a year?

IB6JKET4

Summation - Mr. Paul

1           Watching Steven, as you did during his testimony, did  
2 this milk-drinking individual strike you as a particular high  
3 roller? Does he strike you of even being capable of doing  
4 anything illegal? Did you hear anything in his cross by the  
5 government that even suggested he has ever done anything  
6 illegal or wrong in his past? As he ever committed any crimes?  
7 No. Was there any evidence of him ever having been arrested in  
8 this case? No. No wonder he is still in shock and suffering  
9 for what he is going through after being arrested for this  
10 crime.

11           We heard testimony about drugs being used and sold in  
12 the case by both Sinclair and Finocchiaro. Did Steven ever  
13 sell or even use any kind of narcotics? No. Does he fit into  
14 the kind of group you have been hearing about? No.

15           When you examine Steven and compare him to some of the  
16 other characters in this case like Sinclair and Finocchiaro,  
17 does he even come within the framework of those individuals and  
18 how they think and operate? I don't believe so.

19           There is a definite disconnect with trying to even  
20 imagine fitting Steven into this scheme with the likes of  
21 Sinclair, Finocchiaro and his own brother Arash. In observing  
22 Steven and listening to his testimony, should it surprise you  
23 he became so unglued as he testified to the experience he had  
24 when the agents crashed down his door and rushed into his  
25 apartment at 6:00 o'clock in the morning of March 21, 2017 with

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Summation - Mr. Paul

1 guns drawn and pointed at his head? His reaction was such that  
2 he was literally, again literally reliving the experience as he  
3 told you it happened.

4 You can be sure that as upset as he was on the witness  
5 stand, he was just like that if not worse when they barged into  
6 his apartment. He told you that he thought at the time why is  
7 this happening to me? I've never done anything wrong. Why are  
8 you here busting down my door, searching my apartment, pulling  
9 guns on me?

10 This is not something he was ever familiar with and  
11 has no background in. When told they were there regarding his  
12 brother's business at A1, he told them yes, he was aware of his  
13 brother's business because he had done clerical work for him.

14 Keep in mind, this search happened some six months  
15 after A1 had shut down. As you learned, Steven Ketabchi is  
16 obsessive about record-keeping and organization. He kept many  
17 backup hard drives because he was so obsessive about his  
18 recordkeeping and the storing of documents.

19 If he had known this was an illegal scam business,  
20 would he have kept all of these records or destroyed them?  
21 Doesn't common sense tell you that he thought this was all  
22 legitimate; and, therefore, maintained the treasure trove of  
23 documents the government seized and are now trying to use to  
24 connect him to this crime?

25 There wasn't even a shredder in his apartment and

IB6JKET4

Summation - Mr. Paul

1 certainly no evidence of any attempt to destroy any documents.  
2 In fact, just the opposite. He stored them. He kept them in a  
3 safe as backups not only for his own documents, his brother's  
4 documents, anything he kept.

5 As he testified several times, he saw him several  
6 times over the years of dealing with his brother as his storage  
7 or file cabinet where he stored all of his brother's documents  
8 amongst his own documents.

9 When the government argues that he had on his devices  
10 or in his apartment many documents pertaining to charge-backs,  
11 the fact that he remembers acting only on seven charge-backs  
12 and as was brought out, an additional two consumer complaints  
13 that were not charge-backs, does not mean that he did not have  
14 additional documents pertaining to other charge-backs  
15 downloaded onto his computer. These, however, were not  
16 charge-backs that he personally dealt with or handled.

17 Out of all the hundreds of sales that we can assume A1  
18 made, he dealt with a total of seven charge-backs. Think about  
19 that. Should that have been some clue in Steven's mind that A1  
20 was a fraud business? If anything, given the few that Steven  
21 handled, it was a sign of a legitimate business going on,  
22 dealing with a few customers who wanted refunds for any number  
23 of reasons.

24 What else suggests that in Steven Ketabchi's mind that  
25 A1 was legitimate? Remember that he testified he personally

IB6JKET4

Summation - Mr. Paul

1 purchased products from the Youngevity program. He told you he  
2 purchased vitamins and other items to sell through his own  
3 business called Vitamin Pros. Did the government even  
4 challenge him on this? No, because they couldn't.

5 Does the fact that Steven actually purchased items  
6 from the Youngevity program and became a customer just like  
7 anyone else purchasing these items, show that he thought this  
8 business was real and legitimate? I would suggest to you and  
9 submit it does. He is buying the products sold by the  
10 telemarketing company that they're claiming he knew was  
11 committing fraud. It doesn't fit.

12 He is obviously a trusting soul. Unfortunately, his  
13 brother, on the other hand, is clearly a con artist. So there  
14 obviously appears to be at least one bad apple in the family.

15 Arash Ketabchi obviously conned his brother into  
16 thinking everything was legitimate, and Steven Ketabchi, being  
17 the trusting, gullible person, believed him. As I told you in  
18 my opening remarks, where is Steven Ketabchi throughout this  
19 entire time that he is doing this work for his brother? Is he  
20 in any of the offices? No. Is he dealing with any of the  
21 salespeople or know what they're promising the customers? No.

22 Is he dealing directly with any of the customers? No.

23 He is in California, away from any of this business.  
24 Remember when I told you that the government had introduced a  
25 misleading exhibit regarding the electronic signature for Jane

IB6JKET4

Summation - Mr. Paul

1 Thompson that displayed the positive email of Steven's, and we  
2 had to again bring in an expert to explain this, it was not  
3 sent from Steven who was in California and not New York. Where  
4 was it sent from?

5 Ms. Fletcher told you that my client lied at this  
6 trial certainly about where he learned about Arash Ketabchi's  
7 sales name, Zack Peterson. Clearly and understandably, you saw  
8 how nervous he was. When he said he learned of it during this  
9 trial, that obviously is not correct because he had testified  
10 on direct that he knew Arash Ketabchi's sales name was Zack  
11 Peterson, and you have seen evidence of it. He told you that  
12 this was a common practice for salespeople to use other names,  
13 at least that is what he thought.

14 Ms. Fletcher told you in her summation that Steven  
15 Ketabchi also told you lies just like when he told the agents  
16 who searched his apartment he had nothing to do with his  
17 brother's business. That is not what occurred.

18 First of all, he told you that when he was informed by  
19 the agents they were to conduct a search, they were conducting  
20 a search regarding his brother's business at A1, he said, in  
21 fact, he did work for A1 doing clerical work for both his  
22 brother and his floor in addition to his driving for Uber and  
23 Lyft. She also then showed you a photo.

24 Apparently she thought this was ah-huh, we've got him  
25 now, he is associated --.

IB6JKET4

Summation - Mr. Paul

1 MS. FLETCHER: Objection.

2 MR. PAUL: -- with a bad character.

3 THE COURT: Just a moment. (Pause)

4 The jury will disregard the statement, "Ah-huh, we've  
5 got him now." Just did regard it. Move on.

6 MR. PAUL: Ms. Fletcher showed you this picture taken  
7 with Steven Ketabchi and his sister and it is taken in Las  
8 Vegas, and if we can see the date on this, I believe the date  
9 on this -- thank you -- I am really going blind -- May 3, 2015.

10 By this photo, Ms. Fletcher is attempting to prove  
11 that Steven Ketabchi knew who Ryan Hult was and his role with  
12 Arash Ketabchi, and we know Ryan Hult is in this photograph and  
13 we also know that he played a role with leads for Arash  
14 Ketabchi.

15 Now, May 3, 2015, Steven Ketabchi didn't even begin  
16 dealing with charge-backs for Al until October of 2015. That  
17 is six months after this photo was taken. Steven Ketabchi did  
18 try to make excuses about this photo, as Ms. Fletcher argued?  
19 What he said is he met this individual and simply was  
20 introduced to him as one of Arash Ketabchi's friends or  
21 associates. This was all he knew about it, no more and no  
22 less.

23 I suppose the government is attempting to argue  
24 through this photo what we call guilt by association.  
25 Association with someone that Steven Ketabchi is not familiar

IB6JKET4

Summation - Mr. Paul

1 with or knows anything about is proof about absolutely nothing.

2 Ms. Fletcher argued that the fact that Steven kept  
3 post-its on some documents of the status of the charge-backs he  
4 handled was evidence that he also read the complaints such as  
5 the one from Joe Freeland. The fact that he was careful in  
6 doing his job and checking the status of what was happening  
7 with the charge-backs does not lead one to conclude that he,  
8 therefore, read the complaints. As he told you, the complaints  
9 were not something he focused on because that was for  
10 management to handle, not him.

11 So one should not draw any inferences from his  
12 post-its or notes other than they were what he testified to and  
13 that they were updates on the charge-backs he was handling, and  
14 this, I would submit, is consistent with his personality of  
15 being conscientious about the task at hand and what he was told  
16 to do.

17 He received no commission for his work in helping his  
18 brother respond to the charge-backs. As we said, money into  
19 his bank account, as even Mona said, was often Arash helping  
20 Steven out. Before this trial I doubt many of us even heard of  
21 charge-backs. I know I haven't. We certainly have had our  
22 fill now. What we have learned together is that we know that  
23 charge-backs or contesting charge-backs is perfectly legal.  
24 There is nothing illegal about that. They are something that  
25 is common in many industries, and I would assume that

IB6JKET4

Summation - Mr. Paul

1 telemarketing has more than their fair share.

2           What I hope you also learn from this trial is that  
3 simply because Steven Ketabchi's brother, Arash Ketabchi, was a  
4 true scam artist just like Sinclair and Finocchiaro, that does  
5 make Steven a scam artist as well. His brother's criminal  
6 behavior in this offense should not spill over to him simply  
7 because he's Arash's brother.

8           I don't believe Steven is actually even capable of  
9 even attempting to commit a crime, yet alone to knowingly and  
10 intentionally participate in this wire fraud and money  
11 laundering charge.

12           MS. FLETCHER: Objection; vouching.

13           THE COURT: Yes. Ladies and gentlemen, the views of  
14 the lawyers on the believability of any particular defendant,  
15 their personal view is not at issue here. It is what the  
16 evidence shows or doesn't show. A lawyer is prohibited from  
17 saying "I believe so and so, I disbelief so and so."that is not  
18 to be any part of your calculation. Proceed.

19           MR. PAUL: Ask yourselves, after you've observed my  
20 client and listened to his testimony, ask yourselves whether  
21 this individual is even capable of knowingly and intentionally  
22 participating in a fraud. You ask yourselves.

23           I hate to say it, but Steven Ketabchi is kind of a  
24 pathetic pawn used by his brother to do his work for him  
25 without Arash even ever leveling with Steven about his business

IB6JKET4

Summation - Mr. Paul

1 being a fraud, and we heard that from Sinclair and Finocchiaro.

2 In evaluating the evidence or lack of evidence against  
3 Steven Ketabchi, please use your common sense and ask yourself,  
4 after listening and observing Steven up close, did he strike  
5 you as the type of individual who would or even could knowingly  
6 or intentionally allow himself to be involved in any kind of  
7 fraud.

8 This is a person, I would submit, who is afraid of his  
9 own shadow, yet alone participating in a crime. Listen  
10 carefully to Judge Stein's instructions on the law. Listen to  
11 his instructions regarding the presumption of innocence and how  
12 Steven Ketabchi, as he sits here now, is presumed innocent.  
13 Even when you get up after the Judge's instructions later today  
14 and go in to begin your deliberations, that presumption of  
15 innocence still remains with him.

16 Listen to the burden of proof always being on the  
17 government and how that burden never shifts even if the  
18 defense, as we did in this case, put on a case before you. His  
19 Honor will also instruct you on conscious avoidance. In  
20 layman's terms what this means is that one cannot put their  
21 head in the sand or turn a blind eye in order to remain  
22 ignorant of a material fact to escape the consequences of the  
23 criminal law.

24 Here I submit Steven Ketabchi certainly did not put  
25 his head in the sand so avoid any criminal consequences because

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Summation - Mr. Paul

1 he did not think there were any criminal consequences to avoid.  
2 If he chose not to read customer complaints or certain emails,  
3 that was because in his mind at the time they did not concern  
4 what he was doing or the function he was attempting to perform.

5 Additionally, this charge of conscious avoidance keep  
6 in mind only goes to the issue of knowledge. It does not refer  
7 to the intent of someone, which is another most important  
8 element that the government must prove beyond a reasonable  
9 doubt. Clearly I would submit that the government has failed  
10 to prove either element of the offenses charged among the other  
11 elements his Honor will instruct you on.

12 The defendant is charged with money laundering. Where  
13 is the evidence against Steven Ketabchi regarding this? Listen  
14 to the court's instruction on all the elements of this crime  
15 that have to be met beyond a reasonable doubt as you must  
16 listen carefully to the entire charge that the Judge is going  
17 to give you.

18 Now, I am sure Ms. Kearney has the right under the  
19 rules to sum up and rebut what we've said. That is the rules  
20 we live by. So she has the last word. As you know, lawyers  
21 never like to shut up, so we like the last word, but we can't.  
22 I can't get up here and argue or suggest to you something in  
23 contradiction to what Ms. Kearney is going to talk to you  
24 about. So I ask you, as Mr. Schmidt did, think about how we  
25 might respond to the arguments presented on the rebuttal

IB6JKET4

Summation - Mr. Paul

1 summation because we don't have that chance.

2 Now, in conclusion, and I would just like to say in  
3 people-making decisions, we make decisions every day of our  
4 lives. Some are important, some not so important. Where am I  
5 going to eat tonight or make a determination for the sake of  
6 issues or decisions we made for our loved ones or others. Some  
7 not so important, some extremely important.

8 I don't know where the decision you're about to make  
9 regarding this case concerning my client's guilt or innocence  
10 fits in that section. I do know one thing. The decision  
11 you're going to make is going to be the most important decision  
12 that was ever made in Steven Ketabchi's life, so use your time  
13 carefully, talk amongst yourselves, try to come to an  
14 agreement, evaluate the evidence and apply them as you find the  
15 facts to the law as his Honor is going to instruct you.

16 I am confident if you apply the facts as you have  
17 found them to be, to the law as Judge Stein will give you, then  
18 you will come to only one conclusion that makes any sense, and  
19 that is that the presumption of innocence that follows Steven  
20 Ketabchi even now and into your deliberations has not been  
21 shattered and that the government has failed to prove Steven  
22 Ketabchi's guilt beyond a reasonable doubt as to each count of  
23 this indictment; and, therefore, I submit to you that your  
24 verdict should come back as not guilty to all of the counts  
25 charged. Thank you very much.

IB6JKET4

Summation - Mr. Paul

1 THE COURT: Thank you, Mr. Paul.

2 Ladies and gentlemen, be back at 2:20. Keep an open  
3 mind. We will hear the rebuttal summation of the government  
4 and my charge and then you'll have this this case for your  
5 deliberation. Keep an open mind. 2:20.

6 (Jury excused)

7 THE COURT: Counsel, sidebar.

8 (At sidebar)

9 THE COURT: Mr. Santoro, when you were chosen for this  
10 jury, when you were selected, you indicated you had a doctor's  
11 appointment on Tuesday and you had to leave by 2:00. Is that  
12 right?

13 JUROR: I could probably go to 2:30. It is 4:45 in  
14 Mt. Kisco.

15 THE COURT: Do you still have that appointment?

16 JUROR: I do. I didn't cancel it.

17 THE COURT: What we're going to do, sir, I am going to  
18 let you go to that appointment, all right? You don't have to  
19 come back. For technical reasons, I am not formally excusing  
20 you, but it is purely technical. You can go to your  
21 appointment. You don't have to come back here. You don't have  
22 to check with the clerk or anything like that. There is a  
23 tiny, tiny, tiny little chance I may have to call you, but  
24 realistically you're done, right?

25 JUROR: Okay.

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Summation - Mr. Paul

1 THE COURT: Please don't discuss this with any other  
2 jurors because they haven't reached a conclusion on this case  
3 yet and haven't started their deliberations.

4 JUROR: Okay. Just to be clear, when you say I'm  
5 done, I am coming back after lunch?

6 THE COURT: No. You can leave the courthouse, go to  
7 your medical appointment and not come back until you're chosen  
8 for jury duty again or find yourself in this courthouse for  
9 some other reason.

10 JUROR: Okay.

11 THE COURT: I and the attorneys and the parties thank  
12 you for being available and for being here for the past two and  
13 a half weeks. It is very much appreciated. Go to your  
14 appointment. Thank you.

15 (Mr. Santoro left the sidebar)

16 THE COURT: Counsel will stay. This agreement on the  
17 verdict form is fine with the Court, except I would like you to  
18 put in, "Dated: New York, New York, November blank, 2018", and  
19 instead of by the foreperson, have 12 signature lines, right?

20 Make that change.

21 MR. SCHMIDT: I never had that before.

22 MS. FLETCHER: I think I've got that.

23 THE COURT: See you at 2:20.

24 (Luncheon recess)

25 (Continued on next page)

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1 AFTERNOON SESSION

2 2:20 p.m.

3 (Jury not present)

4 THE COURT: In thinking about the written charge,  
5 which has been accepted, I am going to tell the jury obviously  
6 to disregard that line that's on every single page that the  
7 printer put on it. And also I thought that I should say at  
8 some point that there has been evidence of crimes, such as drug  
9 possession and distribution of drugs, and the defendants are  
10 only charged with the two crimes in the indictment and they are  
11 not on trial for any other crime.

12 MR. SCHMIDT: Your Honor, we are not making that  
13 request.

14 THE COURT: If you'd not, fine.

15 Mr. Paul, it's not relevant to you, I don't think.

16 MR. PAUL: It's not.

17 THE COURT: Then I won't. But you're waiving your  
18 ability to have me say that to the jury.

19 MR. SCHMIDT: That's what I am doing.

20 THE COURT: Fine. I think I can understand the  
21 reasoning, but I wanted to offer it to you.

22 MR. SCHMIDT: I appreciate the offer.

23 THE COURT: How long is the projected rebuttal  
24 summation of the government?

25 MS. KEARNEY: I think between 30 and 45 minutes.

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Rebuttal - Ms. Kearney

1 THE COURT: Then I intend simply to go into the  
2 charge.

3 (Continued on next page)

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IB68KET5

Rebuttal - Ms. Kearney

1 (Jury present)

2 THE COURT: Please be seated in the courtroom.

3 Ladies and gentlemen, we now will hear the rebuttal  
4 summation on behalf of the government by Ms. Kearney.

5 Ms. Kearney.

6 MS. KEARNEY: Thank you.

7 Andrew Owimrin is not a well-intentioned kid who is  
8 oblivious to the fact that the companies that he worked for  
9 were defrauding their customers. He was a salesman who took  
10 advantage of unsuspecting victims selling them nonexistent  
11 add-ons for their sham companies.

12 Shahram Ketabchi, he wasn't an ignorant paper pusher  
13 who was walled off from his brother Arash's criminal scheme.  
14 He was his brother's right-hand man, and he worked diligently  
15 to protect that telemarketing scheme's proceeds and to keep  
16 that company running.

17 Both of these defendants, they want you to believe  
18 that they had no idea that anything they were doing, or  
19 anything that was going on around them, was illegal. But if  
20 you consider the evidence that was presented at this trial, and  
21 even the defendants' own testimony, you know that is not true.

22 Andrew Owimrin and Shahram Ketabchi were well aware  
23 that the salespeople at Olive Branch and at A1 Business  
24 Consultants were defrauding victims. Andrew Owimrin was one of  
25 them. And even though Shahram Ketabchi wasn't working the

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Rebuttal - Ms. Kearney

1 phones, he was responsible for all sorts of functions at A1  
2 that gave him insight into the business. Their e-mail setup  
3 with their phone names, their payroll with the salespeople's  
4 commissions, their merchant accounts, and most importantly,  
5 their chargebacks.

6 Ladies and gentlemen, as you have heard, and as you  
7 will hear again, no defendant has an obligation to put on a  
8 case and no defendant has an obligation to testify. But both  
9 of these defendants have, and both of them have testified under  
10 oath in front of you. And so as we go on, as I walk you  
11 through this rebuttal case, I am going to point out ways in  
12 which their testimony is self-serving, in which it doesn't make  
13 any sense, in which it's just a flat-out lie.

14 But first I want to talk to you a bit about some of  
15 the distractions that defense counsel have put up for you.  
16 What the government has presented to you at this trial, and in  
17 summation, is the evidence. It's the facts. And that's not  
18 what you heard from defense counsel, or from the defendants  
19 themselves. A lot of what you heard was designed to distract  
20 you from the evidence.

21 Now, the lawyers at this table back here, they are  
22 good lawyers. They are working hard for their clients. But  
23 they are not magicians. They can't make the evidence disappear  
24 and they can't make the facts anything other than what they  
25 are. And so if you focus on the evidence and on the facts,

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Rebuttal - Ms. Kearney

1 it's over for the defendants. And so that's why they have to  
2 distract you. That's why they have to get you to focus on  
3 other things. And let's talk about some ways they are trying  
4 to do that.

5 First, you have heard a lot of talk about Youngevity,  
6 how it's some sort of special program. You have heard a lot  
7 about the other products that Andrew Owimrin and the other  
8 salespeople were selling, the LLCs, the corporate credits, the  
9 business plans, the tax prep services, the search engine  
10 optimization. Those were the standard biz-op products. And  
11 Mr. Schmidt has talked at length to you about how Youngevity is  
12 different from the rest of biz-op, how the sales reps were  
13 allowed to make earnings claims, at least at first when they  
14 were selling Youngevity.

15 And Mr. Finocchiaro explained to you that at least  
16 initially the expectation was that the customers would get some  
17 checks within 60 to 90 days, which is why the rules were a bit  
18 different. But then after that sink or swim, the customer was  
19 on his own.

20 But Mr. Finocchiaro also explained to you that  
21 Youngevity is just a dressed-up version of the classic biz-op.  
22 The sales reps then sold the same empty add-ons, the corp  
23 credit, the bookkeeping, the biz plan, as they did to their  
24 other leads, the merchant terminals, grant leads.

25 So in essence what Youngevity was, it was its own lead

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Rebuttal - Ms. Kearney

1 generator. It was another point of entry into a particular  
2 victim, another way to get them on the hook and to get them to  
3 spend money. So in the same way that people at Olive Branch  
4 sold biz-op to the grant leads and the merchant terminal leads  
5 and the people who signed up for coaching, the sales reps could  
6 then pile on biz-op services to the Youngevity customers as  
7 well. And that's because the Youngevity customers, like the  
8 other leads, they were primed to want those services.

9 And with Youngevity there is also the added benefit  
10 that it was Olive Branch that got to keep the profit from that  
11 initial sale, not the lead source. And it was the Olive Branch  
12 sales reps who got to keep that commission.

13 But when they are making the sales, the reps are  
14 making no distinctions between Youngevity and other biz-op  
15 products. And they sold them in whatever combination that  
16 worked for that customer, for whatever price they were willing  
17 to pay. And you know that from looking at the various  
18 contracts, from Jo Ann LaMorte's contract, from Diane  
19 Weissenberger's contract, from Joe Freeland's contract. This  
20 is just a hodgepodge of things that they cobbled together to  
21 make it hit a certain price point.

22 The important thing for you, though, is they needed a  
23 platform to put all of those add-ons on. It didn't matter what  
24 they were because the add-ons were nothing. They were nothing  
25 but some pieces of paper and some weekly phone calls to try to

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Rebuttal - Ms. Kearney

1 string the customer along and keep them on the hook until it  
2 was too late to cancel or chargeback.

3 Now, Mr. Schmidt also spoke to you about how Bill  
4 Sinclair and Michael Finocchiaro bought Youngevity themselves.  
5 And Mr. Paul talked about how Shahram Ketabchi or Steve  
6 Ketabchi bought Youngevity himself. And that too is a  
7 distraction. There is no dispute that it is technically  
8 possible to make money from Youngevity, if you're lucky, and if  
9 you know how to do it.

10 Now, Shahram Ketabchi already had a vitamin business.  
11 He has got a preexisting market for these products. He doesn't  
12 need help getting his Web site off the ground. And Bill  
13 Sinclair and Michael Finocchiaro, they are essentially bringing  
14 in all of the Olive Branch customers under them in the pyramid.  
15 The customers then push them closer to the top of the pyramid.  
16 So any small amount of money that a customer is getting, those  
17 checks in 60 to 90 case days, that benefits Bill Sinclair and  
18 that benefits Michael Finocchiaro.

19 I will also point out, ladies and gentlemen, that just  
20 like when Bill Sinclair had Ray Quiles's fulfillment team do  
21 his LLC, that was real. The paperwork got filed. But no one  
22 was selling biz-op to Bill Sinclair on top of his \$125 LLC.

23 Speaking of Bill Sinclair and Michael Finocchiaro.  
24 You have heard a lot about the crimes that other people  
25 committed during the course of this trial. And there is no

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Rebuttal - Ms. Kearney

1 dispute here that Bill Sinclair and Michael Finocchiaro are  
2 criminals. They have pled guilty to those crimes.

3 You have also heard about a lot of other people. You  
4 have heard about Arash Ketabchi. You have heard about Brooke  
5 Marcus or Emily Miller. And I think you can probably conclude  
6 that they are criminals too. They defrauded victims just like  
7 these defendants. They made misrepresentations to them on the  
8 phone, they sold them empty biz-op plans. But there is no  
9 dispute here that there were other people in this scheme. And  
10 there is no dispute here that Arash Ketabchi was heavily  
11 involved. He was even a leader of this scheme. It's clear  
12 that he was an aggressive, pushy, relentless salesman. But he  
13 is not on trial here. And that doesn't give any cover to  
14 either of these two defendants.

15 If anything, what you know about Arash Ketabchi makes  
16 it clear that nothing he was doing, not when he was the sales  
17 manager at Olive Branch, not when he was running Al, was  
18 remotely legal. And you can tell that just from Government  
19 Exhibit 122. That's the message that was left on David  
20 Kandar's voice mail after Arash Ketabchi thought he had hung  
21 up. And it's in that message that Arash and Andrew Owimrin are  
22 discussing charging 20 grand more on to Charlene Foster's  
23 credit card. And that's how Andrew Owimrin and Arash Ketabchi  
24 talked when they weren't on the phone with a customer and when  
25 they weren't testifying in front of you.

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Rebuttal - Ms. Kearney

1           Andrew Owimrin knew who Arash Ketabchi was. He knew  
2           how he worked. He learned from him. And Arash, he was  
3           comfortable with Andrew Owimrin. Remember, he brought him into  
4           Olive Branch. He took him with him when he left to join A1.  
5           And he involved him in his other crimes. He involved him in  
6           his narcotics distribution. It was Arash who asked Andrew if  
7           he could use his urine to pass a urine test and get more  
8           oxycodone.

9           So there is no reason to think that Arash Ketabchi,  
10          the person who is asking Andrew Owimrin to pee in a cup for  
11          him, would somehow roll off the fraudulent part of A1 from  
12          Andrew Owimrin. There is no reason to think that he would need  
13          Andrew to think that everything they were doing was on the up  
14          and up.

15          I want to make one more point with respect to Shahram  
16          Ketabchi. Even if you believe him, that it was all Arash  
17          Ketabchi who was doing the fraud, all Arash and the  
18          salespeople, he doesn't have to have committed the wire fraud  
19          to be guilty of the money laundering. Because he knew what  
20          Arash and the salespeople were doing. He saw the paperwork.  
21          He saw the documents. And by fighting those chargebacks, by  
22          knowingly and intentionally causing transactions in the  
23          proceeds of Arash and Andrew Owimrin and the rest of A1's  
24          fraud, he knowingly and intentionally caused those transactions  
25          to keep those merchant accounts open and to keep A1 in

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Rebuttal - Ms. Kearney

1 business.

2 What else is a distraction here, ladies and gentlemen?  
3 Andrew Owimrin's phone records. I think that should be clear  
4 to you by now. They don't show texts. They don't show  
5 three-way calls. And they don't show any calls he made from  
6 his office phone. So what is the takeaway?

7 Well, he used his cell phone to call some of the  
8 victims who testified here. He talked to Jane Thompson a lot.  
9 He talked to Brooke Marcus or Emily Miller a whole lot.  
10 Nothing more. Nothing less.

11 And don't get caught up in the IP address that  
12 Mr. Paul spoke to you at length about. That's the IP address  
13 that uploaded Jane Thompson's web service and contract. It's a  
14 red herring. Either Shahram Ketabchi, who is the owner of the  
15 e-mail address that the account is registered to, uploaded the  
16 document or someone else at A1 did.

17 Now, I submit it's unlikely that Arash, who apparently  
18 can't even type two sentences, is the one who uploaded the  
19 document. But that December 29 contract, that's far from  
20 Shahram Ketabchi's only involvement with the fraudulent sales  
21 that Owimrin and Arash and the other sales folks at A1 were  
22 making. And it's far from his only involvement in the sales to  
23 Jane Thompson.

24 Remember all of the documents that Ms. Fletcher walked  
25 you through that were found on Shahram Ketabchi's computer.

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Rebuttal - Ms. Kearney

1 That sham partnership contract. The cover letters that went  
2 with it. That shipping label. And the e-mail alerting Shahram  
3 Ketabchi that Al had just made an \$149,999 sale. And setting  
4 up that Adobe account, that's far from Shahram Ketabchi's only  
5 involvement in this scheme.

6 You have heard a lot about the chargebacks. But don't  
7 forget that it was Shahram Ketabchi who is the liaison with the  
8 merchant processing company. It was Shahram Ketabchi who set  
9 up Al's back office. It was their e-mail, their Web site,  
10 their bank accounts. And the reason for that Web site that was  
11 set up -- you saw that in the text messages -- that is to show  
12 legitimacy. That shows that merchant processors do their due  
13 diligence when they do research on what Al is, why they are  
14 getting so many chargebacks. That makes it look like they are  
15 a real company doing real things, not defrauding people.

16 It's Shahram Ketabchi who texted his brother Arash and  
17 said that they needed that Web site, that they needed to show  
18 legitimacy. And you know, ladies and gentlemen, that that's  
19 because Al wasn't legit.

20 Shahram Ketabchi was involved in sending lead lists to  
21 his brother and in making those payments for those lead lists.  
22 You saw the e-mails attaching the spreadsheets of potential  
23 victims. You saw the wire information for how to pay the lead  
24 sources.

25 You have also heard that Al had a secretary for rote

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Rebuttal - Ms. Kearney

1 tasks. You heard about Jolaina Aziz. You heard what she was  
2 doing. You heard about the filing she did, how she compiled  
3 the documents. But when there is something truly important,  
4 something that is necessary for the existence of the company,  
5 Arash doesn't turn to Jolaina. He turns to Shahram Ketabchi.

6 Fighting chargebacks is the lifeblood of Al. If they  
7 lose those chargebacks, their merchant accounts get shut down  
8 and the company can't take in any more credit card payments,  
9 they can't defraud any more victims, and they can't exist. And  
10 that is the task that Arash brought to Shahram Ketabchi.

11 Here is another distraction. The defense, and  
12 especially Mr. Paul, talked about what you don't have, what is  
13 not in evidence. Don't get caught up in that.

14 First, as Judge Stein has already instructed you, the  
15 government is not required to use any particular investigative  
16 technique, and why the government did or didn't use a  
17 particular technique is not before you.

18 Second, Mr. Schmidt made reference to not hearing  
19 about the other 97 percent of Al's sales. But look instead at  
20 the evidence you have in front of you. Look at the victims who  
21 did testify. Look at the e-mails and the documents. Any of  
22 those victims that you have heard from, that is more than  
23 enough to find that Andrew Owimrin participated in a wire fraud  
24 conspiracy.

25 MR. SCHMIDT: Objection, your Honor. Can we approach?

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Rebuttal - Ms. Kearney

1 THE COURT: Ladies and gentlemen, the elements of each  
2 of the crimes of this conspiracy, to commit wire fraud and  
3 conspiracy to commit money laundering, will be set forth by me  
4 in the charge and you are to follow that charge on the law.

5 MR. SCHMIDT: That's not the issue, your Honor.

6 THE COURT: Sidebar.

7 (At the sidebar)

8 THE COURT: What is the issue?

9 MR. SCHMIDT: The issue is she is now referring to  
10 documents, most of which has been offered into evidence for the  
11 state of mind of Shahram Ketabchi and cannot be used as  
12 evidence of any type of guilt for my client.

13 MS. KEARNEY: I simply stated they should listen to  
14 the testimony of the victims who did testify and they should  
15 look at the documents that they have seen.

16 MR. SCHMIDT: The documents that they have seen, a  
17 large part of them relating to the customers -- and that's in  
18 relation to what she is talking about -- were admitted for  
19 Shahram Ketabchi's state of mind only. That's basically asking  
20 them to look at, for my client's guilt, all of the documents,  
21 which include all of those documents that were entered into  
22 evidence for Shahram Ketabchi's state of mind only.

23 MS. KEARNEY: They have been instructed on that, your  
24 Honor. I was referring to the contract documents that were in  
25 evidence, the e-mails that are in evidence, that are admitted

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Rebuttal - Ms. Kearney

1 for their truth.

2 THE COURT: Why don't you say that?

3 MS. KEARNEY: I will.

4 THE COURT: Let's move on.

5 When you're saying what you are going to say, say  
6 those documents that have been admitted for the truth of what  
7 is set forth.

8 MS. KEARNEY: I will.

9 (In open court)

10 MS. KEARNEY: Let me specify, ladies and gentlemen.  
11 When I told you to look at documents and e-mails and I said  
12 that was more than enough to prove Andrew Owimrin's guilt, I  
13 want you to look at the documents that have been admitted for  
14 their truth. I want you to look at the documents, the contract  
15 documents from these victims, from Diane Weissenberger, from Jo  
16 Anne LaMorte. I want you to look at the e-mails. I want you  
17 to look at the spreadsheets. If you do that, if you look at  
18 those documents, you know that Andrew Owimrin participated in a  
19 conspiracy to defraud these people. You don't need anything  
20 more than that.

21 You have also heard a lot about the gray area in which  
22 Olive Branch operated, about the steps that Bill Sinclair and  
23 Michael Finocchiaro took in order to stay off the radar, to  
24 avoid problems with the authorities.

25 Let me be clear. Those precautions, those rules about

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Rebuttal - Ms. Kearney

1 what sales reps could or couldn't say on the phone, the  
2 monitored calls, the scripts, those weren't about making sure  
3 they were running a legal operation. Bill Sinclair and Michael  
4 Finocchiaro have both told you that. This was about not  
5 attracting attention from regulators like the FTC and from law  
6 enforcement, like the police and the state attorney general's  
7 offices.

8 It was also about making sure that they could keep  
9 making money, keep processing payments without interruption,  
10 without being flagged as a problematic merchant account.

11 Now, Mr. Schmidt spoke to you about doing things the  
12 right way. The right way isn't about whether something was  
13 legal or illegal when it came to Olive Branch and A1. The  
14 right way is about making money and holding onto it.

15 And so when Andrew Owimrin was faced with the choice  
16 between staying at Olive Branch where there were some rules and  
17 limitations and it was cutting into his commission, and going  
18 with Arash to A1, he chose A1. He could have stayed at Olive  
19 Branch. He was friendly with Mr. Finocchiaro. He was still  
20 buying drugs from him. But all of those restrictions are  
21 cutting into his bank account. So he left. And he chose to  
22 enter the wild west at A1 where there were no rules, there were  
23 no limits, where he could make a \$149,000 sale to Jane Thompson  
24 in one go.

25 So by the time Andrew Owimrin gets to A1, whatever

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1 blinders he had on are off. To use Mr. Schmidt's metaphor, the  
2 bucket is overflowing. And yet he carries on and he sells to  
3 victim after victim after victim and he goes back to Jane  
4 Thompson over and over again.

5 Now, the most important protection of the gray area  
6 that you heard about is the so-called fulfillment department.  
7 And the key to maintaining the appearance of legitimacy is  
8 being able to produce documents that back up your transaction.  
9 You heard that from Bill Sinclair and you heard that from  
10 Michael Finocchiaro. And so that means you need a signed  
11 contract. And if the customer tries to cancel, it's not the  
12 end of the world. You get a continuation of services agreement  
13 and that really locks them in.

14 But what is really useful is what Bill Sinclair called  
15 a tangible. That's something that you can send to the credit  
16 card company, or to the attorney general's office, or whoever  
17 else comes knocking, that shows that the victim got something.

18 And this whole scheme is designed to look real to the  
19 people on the outside. But if you're on the inside, if like  
20 Shahram Ketabchi you look at the documents that are actually  
21 being produced, or, if like Andrew Owimrin you are actually  
22 talking to the victims, it's obvious that none of this is real.

23 Let's talk about the tangibles first, the documents  
24 that fulfillment was sending to the victims.

25 You have seen the business plans and the forms that

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Rebuttal - Ms. Kearney

1 the victims are supposed to fill out. It's obvious at one  
2 glance that those are complete filler. You could take a look  
3 for yourselves. They are in evidence. You can compare Jane  
4 Thompson's business plan to Charlene Foster's business plan to  
5 Patricia Cabral's business plan. Except for the name of the  
6 company, they are all the same.

7 And you know that that was obvious to Shahram Ketabchi  
8 too. He is a businessman himself. He told you he has his own  
9 business plans for several of his companies. And I bet they  
10 don't look like Jane Thompson's.

11 So Shahram Ketabchi knew that what fulfillment was  
12 supplying was completely bogus. And he knew that because he  
13 had all of those documents in front of him. And you know he  
14 knew that because he texts with Arash Ketabchi about it.

15 Now, Mr. Paul didn't show you a single one of these  
16 documents. And he didn't give you a single explanation for any  
17 of these documents. And that's because he knows that when you  
18 flip through them, when you look at them, it will be obvious to  
19 you, who have only known about this for over a little over two  
20 weeks, that they are a sham.

21 Even Jane Thompson, this was a joke, and she told  
22 Andrew Owimrin that. Said this was a joke. You heard how  
23 insistent she was. You heard how she told him over and over  
24 that she wasn't filling out any of these forms, that these  
25 forms were useless, that she didn't want to do any of that.

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Rebuttal - Ms. Kearney

1 But even putting that aside, Andrew Owimrin's claim  
2 that he thought that all of his customers were just getting the  
3 services they paid for to help build up their web companies,  
4 that's just not believable. Because Andrew Owimrin was the one  
5 who spoke to the victims. There is no way that he believed  
6 that Diane Weissenberger or Charlene Foster had an Internet  
7 business. And there is no way that he believes that any amount  
8 of coaching or search engine optimization or YouTube videos  
9 would make those businesses real.

10 And he knew all about the victims' complaints. Just  
11 think of Jane Thompson. Remember the conversation she told you  
12 about when fulfillment told her that they didn't do Web sites.  
13 And she brought that to Andrew Owimrin's attention. So it's  
14 clear, and it was clear to both of these defendants, that none  
15 of this was real. There were no Internet businesses and there  
16 was nothing that an LLC had a boilerplate business plan. Both  
17 defendants knew that, and yet they carried on.

18 Mr. Schmidt also talked to you a lot about Andrew  
19 Owimrin's demeanor and the sales he didn't make and how nice he  
20 was to people on the phone. Ladies and gentlemen, you know  
21 that means nothing.

22 Let's talk first about the sales that didn't happen.  
23 Mr. Schmidt showed you some of Andrew Owimrin's calendar  
24 entries for the customers that he didn't sell to, customers who  
25 were, in Mr. Owimrin's words, broke. And that made sense. As

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Rebuttal - Ms. Kearney

1 Mr. Finocchiaro told you, this is a numbers game. It's not  
2 worth your time to stay on the phone with someone who doesn't  
3 have money or who is not going to be convinced or who can't  
4 pay. You have to be strategic with your time.

5 So it makes sense that he would get off the phone with  
6 someone who is already crushed under medical bills, or who  
7 didn't keep their appointments. That's not going to get him  
8 his commission.

9 Second, Andrew Owimrin's phone persona doesn't alter  
10 any of the evidence that he lied to his victims about how much  
11 money they could make, about what they would have to do in  
12 connection with their businesses, or about how those biz-op  
13 products he was peddling could make those businesses  
14 profitable.

15 As Ms. Fletcher explained to you in her closing  
16 argument, every sales rep has their own style. Some are  
17 steamrollers, like Arash, and some catch more flies with honey,  
18 and that's Andrew Owimrin.

19 As a preliminary matter, the fact that other  
20 salespeople were aggressive or pushy or not friendly, that's no  
21 defense here. You can be friendly and you can be pleasant and  
22 you can still be deceive people. And that's what Andrew  
23 Owimrin did.

24 In fact, it's helpful for him to be nice, to befriend  
25 these women. Part of his MO is he keeps going back to the

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Rebuttal - Ms. Kearney

1 well. You saw him do that with Diane Weissenberger. You saw  
2 him do that with Charlene Foster. And most egregiously you saw  
3 him do that with Jane Thompson. So let's talk about that.

4 First, Diane Weissenberger. There is no confusion  
5 about what contracts she entered or what products she was sold.  
6 You can look at the documents yourself. It's clear what  
7 happened here is she had an initial contract for about \$14,000  
8 and she charged back and she only charged back for about  
9 \$10,000. And that's split up into two separate transactions.  
10 That's why you see two transactions the.

11 Then Andrew Owimrin sells her again, this time for  
12 \$15,000.

13 So what we see here is Diane Weissenberger was sold by  
14 Andrew Owimrin, who at that time was called Andrew Owens, for  
15 her merchant terminal business. Bill Sinclair told you how she  
16 is on the lead list for merchant terminals. Gets charged back.  
17 Continuation of service agreement. You know the drill.

18 Then Andrew Owimrin, this time Jonathan Stewart, sells  
19 her Youngevity and more biz-ops on top of that.

20 So what that means now is that, according to Andrew  
21 Owimrin, he thinks Diane Weissenberger has not one, but two  
22 functioning Internet businesses, both of which need biz-op.

23 Ladies and gentlemen, that's not a nice guy. That's a  
24 guy who knows a good mark.

25 Now, when Mr. Owimrin testified, he wanted you to

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1 believe that he feels, I think his words were, horrible about  
2 Jane Thompson. But he didn't feel so horrible that he didn't  
3 take 10 percent of every payment that she made to Al. And he  
4 didn't feel so bad that he didn't go back to her after that  
5 sham partnership, after that \$150,000 one last time for another  
6 \$10,000 in tax prep. And he didn't feel so bad that he didn't  
7 brag about that \$150,000 sale to Bill Sinclair. And he didn't  
8 feel so bad that he didn't encourage Bill Sinclair to try to  
9 sell her debt consolidation. He didn't feel so bad that he was  
10 going to keep partying with Arash in Vegas.

11 Look at those Instagram posts from Andrew Owimrin's  
12 account. Look at the dates of them. They are in April.  
13 That's right after Jane Thompson's sham partnership's last  
14 contract.

15 Now, Andrew Owimrin's attempts to sell debt to Jane  
16 Thompson is important here. Mr. Schmidt never even addressed  
17 that conversation that Bill Sinclair told you about. Remember  
18 what he said about that \$149,000 sale. Bill Sinclair told you  
19 that Andrew Owimrin complained about his commission. He said  
20 he thought he was going to get a 50/50 split with Arash  
21 Ketabchi and he was disappointed.

22 That shows just how much work he put into getting that  
23 sale, ladies and gentlemen. If you are just a passive  
24 participant, if you were just sitting on that phone learning  
25 about merchant terminals, there is no way he could expect a 50

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1 percent commission. He told you himself he is not making more  
2 than 10.

3 What else did Bill Sinclair tell you about that  
4 conversation? That Andrew Owimrin told him that Jane Thompson  
5 was getting nothing from that investment. So any kind of story  
6 that he thought that Al was making money and he thought Jane  
7 Thompson was getting 20 percent of that is a lie.

8 And after he told Bill Sinclair that, what did he do?  
9 He laughed about it. And then he suggested selling her debt  
10 consolidation services.

11 Now, the Andrew Owimrin you saw on that stand, ladies  
12 and gentlemen, that's the Andrew Owimrin that the victims spoke  
13 to. He's nice. He is personable. He's charming. But he has  
14 an agenda. He wants you to buy LLCs and corp credit training,  
15 whatever that is. He wants to up-sell you next week for some  
16 search engine optimization and some YouTube videos. He will  
17 get on a three-way call with you and get you a new credit card  
18 so you can max out that credit limit. He wants you to believe  
19 the story because it benefits him.

20 Now, Mr. Schmidt also talked to you about what he  
21 called the mistakes that the victims made when they testified  
22 in front of you. But you know what happened, ladies and  
23 gentlemen. You saw the checks that they wrote. You saw the  
24 credit card bills. You know where that money went. It went to  
25 Al and it went into Andrew Owimrin's bank account.

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Rebuttal - Ms. Kearney

1           Of course these victims were called by lots of  
2 different companies. That is how this scheme worked. Leads  
3 get sent to different companies and different companies try to  
4 pitch them on the biz-op. That's why you heard about the  
5 passwords. They are trying to protect their property.

6           And the pitch that you heard that they make for  
7 biz-op, that's designed for plausible deniability. You never  
8 come out with a figure on how much a victim is going to make.  
9 You make them suggest that number to you and make them believe  
10 that that's what is going to happen.

11           But if you have listened to the victims' testimony,  
12 you will hear that on all of the important points they are  
13 consistent, and that's because this is pattern, an MO. This is  
14 how Al and Olive Branch made their sales.

15           But I want to specifically address some of the things  
16 Mr. Schmidt said about Jane Thompson. So I want to take a look  
17 at her notes.

18           Ms. Lee, could you put up Government Exhibit 165A.

19           Actually, hold on off that for a second.

20           Let me suggest to you that you take a look at her  
21 notes. That's Government Exhibit 165A. They are all dated and  
22 she told you how she wrote them. She told you she put the  
23 date, the time, the name of the person she was talking to and  
24 what they discussed.

25           And I want you to look at the checks that she wrote to

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1 A1. I want you to look at the dates on those checks, the memo  
2 lines in the checks, and I want you to compare those checks to  
3 her notes, and look at who she spoke to right before she wrote  
4 those checks, and look at what they said to her.

5 So let me show you an example of that.

6 Ms. Lee, could you put up page 31 of Government  
7 Exhibit 165A, please.

8 Could you zoom in on the top of the left-hand side.

9 Ladies and gentlemen, this is the final call before  
10 Jane Thompson committed to the \$149,999 partnership interest.

11 This is the call where Andrew Owimrin told you that he  
12 talked to her about the merchant terminals but he wasn't really  
13 sure what they were, and that he handed off the phone to Zach  
14 Peterson and left the room to take another call.

15 But look at the notes. That's the date, Wednesday  
16 February 3. Jonathan Stewart. That's Andrew Owimrin. That's  
17 who she spoke with. 4 p.m.

18 And then look at the order that these notes are in.  
19 First they discuss Mr. Peterson's offer about the 20 percent  
20 stake in A1.

21 Then they discuss the merchant accounts.

22 Andrew Owimrin's story doesn't line up. It's clear  
23 that Jane Thompson talks to Jonathan Stewart before she wrote  
24 that check.

25 How else do you know? His commission. You have heard

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1 a lot about Arash Ketabchi, ladies and gentlemen. And do you  
2 think that Arash Ketabchi would have paid a commission to  
3 Andrew Owimrin for work he didn't do?

4 Let me also talk about Emily Miller. You have heard  
5 that she worked for First Trend, or Tri-Star, the company went  
6 by a couple of names. And those companies sold sham merchant  
7 terminals to their victims and then they sold those leads to  
8 Olive Branch and A1 for the biz-op sale.

9 Look, it's clear that Brooke Marcus, or Emily Miller,  
10 is culpable here too. You heard it from Jane Thompson. It was  
11 Emily who held her hand through this. It was Emily who  
12 introduced her to A1 and Jonathan Stewart. And it was Emily  
13 who kept her on course here.

14 But to suggest that it was Emily Miller who  
15 spearheaded the second merchant terminal scheme, the one with  
16 A1, that defies logic, ladies and gentlemen. Emily Miller  
17 doesn't need A1 to sell merchant terminals. First Trend does  
18 that. Michael Goldman does that. Steve Blake does that. And  
19 they are still calling Jane Thompson.

20 So if Emily wants to sell merchant terminals to Jane  
21 Thompson all she has to do is tell Jane Thompson to invest with  
22 Steve Blake or Michael Goldman or one of the 15 other companies  
23 that is calling Jane Thompson. And if she does that, then  
24 First Trend, Emily's company, gets the whole sale. They don't  
25 have to split it with A1. They don't have to pay Andrew

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1 Owimrin's commission.

2 You also know, ladies and gentlemen, that Jane  
3 Thompson never got those taxes done, even though she purchased  
4 those services several times over. And you know she talked to  
5 Jonathan about that. She was insistent, and it is in her  
6 notes.

7 But did Jonathan Stewart or Andrew Owimrin take that  
8 back to fulfillment and check on what the problem was? Of  
9 course not. Because he knew what the problem was, ladies and  
10 gentlemen. It's that those tax services weren't coming. It  
11 was an empty promise to keep Jane Thompson engaged and to have  
12 access to her so she could keep buying more of these terminals  
13 and partnerships and more tax preps until she was done.

14 What happened to Jane Thompson is proof that Andrew  
15 Owimrin wasn't trying to do it the right way. And that's why,  
16 ladies and gentlemen, he had to change his story when he told  
17 you what happened to her.

18 So you know that Andrew Owimrin's story doesn't make  
19 sense. I want to talk about how Shahram Ketabchi's story  
20 doesn't make sense.

21 He wants you to believe that he received all of these  
22 documents, he was tasked with the very important responsibility  
23 of keeping the merchant accounts in check, of keeping the  
24 chargebacks fought, but that he never looked in any of the  
25 documents. He never read them, he never flipped through them,

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Rebuttal - Ms. Kearney

1 he never saw any of the complaints.

2 But think about how he answered every other question  
3 when he was up on that stand. He said something like, I would  
4 have to verify that. Or I would have to look into that  
5 further. Or I can't be 100 percent sure.

6 So do you really think that he didn't look further  
7 into the documents he was submitting, that he didn't verify  
8 what he was writing down? Do you really think that any of  
9 those documents that he printed out he never read? And do you  
10 really think that Shahram Ketabchi, who, as he told you, is  
11 passionate about customer service, didn't notice any of these  
12 complaints?

13 And it's clear that he did. Because he responded to  
14 specific allegations that the victims made. And you have seen  
15 a couple of those, ladies and gentlemen. For example, take a  
16 look at Jeanette Waldrup's complaint. In that she uses very  
17 precise language. She said she was promised a 2 percent  
18 residual. And he references that in his response. There is no  
19 way he would know what she was complaining about if he didn't  
20 look it over.

21 But when Shahram Ketabchi is up against a wall, ladies  
22 and gentlemen, when he can't come up with an answer that makes  
23 him look just like a human filing cabinet, his reflex is to  
24 deny. It's to push things aside. It's to claim he didn't have  
25 time for any of that. His instinct is to lie.

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Rebuttal - Ms. Kearney

1 Ladies and gentlemen, it's clear that this is a  
2 massive fraud. It was perpetrated across the country by  
3 employees of Olive Branch and by Al. Andrew Owimrin was one of  
4 those salespeople. He lied to people on the phone. He lied to  
5 get them to buy things. He lied to keep them on the hook. And  
6 he lied to prevent them from canceling or charging back their  
7 contracts.

8 Shahram Ketabchi facilitated that fraud. He set up  
9 the accounts that they were using to pass the money through.  
10 And he made sure that Al got to keep the proceeds of that fraud  
11 by fighting the chargebacks.

12 And that's where the money laundering comes in, ladies  
13 and gentlemen. Shahram Ketabchi agreed with others to conduct  
14 financial transactions in criminal proceeds. That's the  
15 victims' money. And he did that in order to promote the fraud,  
16 to keep those merchant accounts open, to keep the money flowing  
17 in.

18 And Andrew Owimrin did it too. Remember we spoke  
19 about that Element account. That account was used to receive  
20 and distribute proceeds of those fraudulent sales.

21 This isn't a hard case, ladies and gentlemen. It's  
22 clear what happened here.

23 I ask you to hold these men accountable for their  
24 roles in these crimes and to find them guilty as charged.

25 THE COURT: Thank you, Ms. Kearney.

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Rebuttal - Ms. Kearney

1 MR. SCHMIDT: Your Honor, may we approach, please?

2 THE COURT: Very briefly.

3 Ladies and gentlemen, you can stand and stretch  
4 because I am about to read you the charge.

5 (At the sidebar)

6 THE COURT: Yes, sir.

7 MR. SCHMIDT: I do this in an excess of caution  
8 because I don't have any documents in front of me at this  
9 point. The government in their summation said that Emily  
10 Miller did not need to go to A1 for the second sale of merchant  
11 processing. She could have just gone back to Elite and First  
12 Trend.

13 It is my understanding that Ms. Miller was fired from  
14 First Trend and Elite for giving leads to Mr. Ketabchi instead  
15 of Mr. Sinclair. And the reason why I am cautious is because I  
16 don't have a date in front of me because I didn't think of  
17 checking the exact date that she left. My recollection is that  
18 it is something like December 2016, but I am not certain. But  
19 I am certain in reviewing the 3500 material for her, but I am  
20 sure the government may be more aware of having talked to Ms.  
21 Brooke Marcus when she left, when she was fired from First  
22 Trend.

23 THE COURT: Just a moment. Where are you going?  
24 What's your point?

25 MR. SCHMIDT: They made a statement. They summed up

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Rebuttal - Ms. Kearney

1 saying that they did not need --

2 THE COURT: Brooke Marcus did not.

3 MR. SCHMIDT: -- Emily Miller did not need to do -- if  
4 she wanted to do another deal, she could have done it with A1.  
5 She could have done it with First Trend. She had been fired by  
6 First Trend by that time, because already --

7 THE COURT: Is there evidence in this record of her  
8 firing?

9 MR. SCHMIDT: There is evidence of her saying was  
10 leaving First Trend and going to A1, and there is in evidence  
11 Ms. Thompson's phone that she changed the name of the company  
12 that she worked for to A1.

13 THE COURT: What is it that you're asking me to do?

14 MR. SCHMIDT: If the government made a  
15 misrepresentation that they are aware of in their argument --

16 THE COURT: The misrepresentation is?

17 MR. SCHMIDT: That she could have gone back to A1.

18 THE COURT: Because the government knows she was  
19 already fired by them.

20 MR. SCHMIDT: That's correct.

21 THE COURT: Is that in the record, her firing? I  
22 don't remember that to be in the record.

23 MR. SCHMIDT: It's in the record she is leaving. I am  
24 not talking about the record.

25 THE COURT: You are talking about their knowledge.

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Rebuttal - Ms. Kearney

1 Go ahead.

2 MS. KEARNEY: I have no knowledge of Brooke Marcus's  
3 firing. If you say it's in her 3500, I am happy to take a  
4 look.

5 I think what you're referring to, Mr. Schmidt, is that  
6 Jane Thompson testified that she thought Emily Miller was  
7 changing companies. But there is no evidence in the record of  
8 her firing. I am unaware of any record of firing. In fact, if  
9 you look at the checks that postdate the Jane Thompson  
10 transaction, they are written to the same merchant account as  
11 the first checks to First Trend.

12 THE COURT: I am not going to change anything.

13 MR. SCHMIDT: I am not attacking Ms. Kearney  
14 personally because I don't know if she was going to be the  
15 person reviewing Brooke Marcus. If that information is in the  
16 3500 material, they are responsible for it, and that  
17 misrepresentation is a serious misrepresentation, whether  
18 intentional or not, that would require a mistrial. That's why  
19 I brought it up before we were done.

20 MS. FLETCHER: I know we are on the same side. I  
21 think what Mr. Schmidt is referring to is in the 3500 material  
22 for Bill Sinclair, Bill Sinclair said that he thought that she  
23 was fired for stealing leads. He, as best as we know, he is  
24 wrong about that.

25 MR. SCHMIDT: I am not attacking them personally.

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Rebuttal - Ms. Kearney

1 This is what I had in my mind and I wanted it resolved.

2 THE COURT: It's on the record. I am certainly not  
3 going to grant a mistrial on this. And I am not sure it would  
4 be a misrepresentation if this prosecutor is unaware of it  
5 being in the 3500 material. In any event, it doesn't rise to  
6 the level of a mistrial for sure.

7 Sir.

8 MR. PAUL: Because I am hesitant to object during  
9 summations, and I should have, but I tend not to do that out of  
10 a courtesy. However, it's my understanding that in listening  
11 to Ms. Kearney give her summation, she referred to the fact  
12 that I did not introduce or refer to documents because I knew  
13 that by presenting documents it would show something negative  
14 about my client. I don't think that's proper comment that  
15 could be made as to my knowledge.

16 THE COURT: I am concerned about that. I didn't catch  
17 that, however. If that were true, I would be concerned.

18 MS. KEARNEY: I may have misspoken. What I meant to  
19 say, you weren't able to explain any of the documents.

20 MR. PAUL: That's not what you said.

21 THE COURT: What would you like?

22 MR. PAUL: I would like an instruction to the jury  
23 that the fact that Ms. Kearney referred to the knowledge that I  
24 may have had behind not introducing documents was improper and  
25 should be ignored by the jury.

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Rebuttal - Ms. Kearney

1 THE COURT: Do you happen to have that? Can you show  
2 that to me in the record?

3 MR. PAUL: I am not getting it.

4 THE COURT: It doesn't rise to that level. I am not  
5 going to give a separate instruction.

6 Just a moment. Let me think.

7 MR. SCHMIDT: May I make a suggestion? In the charge  
8 when you basically talk about arguments of counsel, you can say  
9 arguments by one counsel of another also isn't evidence.

10 THE COURT: I think what I will do is something along  
11 the lines of what the lawyers say another lawyer knew or didn't  
12 know is not relevant. What is relevant is what the evidence  
13 shows and the inferences that are permitted to be drawn.

14 MR. PAUL: That's fine.

15 MR. SCHMIDT: That's fine with me.

16 THE COURT: Government.

17 MS. KEARNEY: Thank you. Yes.

18 (Continued on next page)  
19  
20  
21  
22  
23  
24  
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Charge

1 (In open court)

2 THE COURT: Ladies and gentlemen, in summations, I  
3 want to remind you that your concern is not what a lawyer or  
4 the other lawyer, depend being on who was giving the summation,  
5 thought or knew. That is not your concern. Your concern is  
6 what the evidence showed or didn't show, not what some lawyer  
7 thought or didn't think, all right?

8 I am now going to instruct you on the law that you  
9 will apply to the facts in this case. You will determine the  
10 facts in accordance with these instructions on the law.

11 I am going to explain first my role and your role, and  
12 by and large, we have already been over this at the very  
13 beginning two and a half weeks ago. You have to decide whether  
14 or not the guilt of each defendant has been proved beyond a  
15 reasonable doubt. You pass on the fact issues here. I do not  
16 find the facts. You are the sole and exclusive judges of the  
17 facts. You pass on the weight of the evidence, you determine  
18 the credibility of the witnesses, you resolve any conflicts  
19 there may be in the testimony, and you draw whatever reasonable  
20 inferences you decide to draw from the facts as you determine  
21 them to be.

22 You must exercise this great responsibility with  
23 fairness and impartiality. Your decision, as I've said many  
24 times, must be based solely on the evidence presented here in  
25 court or the lack of evidence. You must not and are not

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Charge

1 permitted to be influenced by bias, prejudice or sympathy by or  
2 for any party.

3 You must accept the law as I state it to you in these  
4 instructions and you apply it to the facts as you decide them.  
5 You cannot substitute your idea of what the law should be for  
6 what I tell you the law is because just as you alone, ladies  
7 and gentlemen of the jury, find the facts, I alone determine  
8 the law, and you must accept the law as I state it to you.

9 For that same reason, if any of the attorneys who have  
10 been giving summations to you has stated a legal principle  
11 different from any that I'm about to give you in these  
12 instructions, it is these instructions you have to follow.  
13 Also, ladies and gentlemen, do not single out any one  
14 instruction or any one word or phrase or sentence in an  
15 instruction as alone stating the law. I want you -- and you  
16 must -- to consider these instructions as a whole.

17 Now, ladies and gentlemen, I am going to give you when  
18 you start deliberating a copy of these instructions. Indeed,  
19 if you want, we can make copies for all of you. It makes no  
20 difference. There are lots of printers here. It is very easy.  
21 The reason I don't give it to you now is I have found that if I  
22 were to give each of you a copy of these, people tend to kind  
23 of read it blindly, and what I want you to do over the course  
24 of the next hour or so is listen and try to understand it.

25 You don't have to worry about specifics because, as I

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Charge

1 was stating, of course you think about specifics, but you know  
2 what I mean. Listen to the instructions, think about them.  
3 Since you're going to have a copy or as many copies as you  
4 want, you will always be able to go back and look specifically  
5 at them.

6 I remind you that all parties; that is, the  
7 government, the United States of America, and Mr. Owimrin and  
8 Mr. Shahram Ketabchi, stand as equals before a jury in the  
9 Courts of the United States. You must disregard any feelings  
10 you may have about each of the defendant's races, religions,  
11 national origins, sex or age. You cannot consider any personal  
12 feelings you may have about the race, religion, national  
13 origin, sex or age of any witness or either of the defendants  
14 or anyone else involved in this case, and it is improper for  
15 you to allow any feelings you might have about the nature of  
16 the crimes charged to interfere with your decision-making  
17 process.

18 The fact that the government is a party and the  
19 prosecution is brought in the name of the United States does  
20 not entitle the government or its witnesses to any greater  
21 consideration than that given to either of the defendants. By  
22 the same token, you must not give the government less  
23 consideration. The government and Mr. Owimrin and Mr. Shahram  
24 Ketabchi stand on equal footing before you today. Your verdict  
25 must be based solely on the evidence or lack of evidence.

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Charge

1 Ladies and gentlemen, as I read these instructions to  
2 you, you'll see there are certain recurring themes. Certainly  
3 one of them is that your verdict must be based solely on the  
4 evidence or lack of evidence. For the same reasons, the  
5 personalities and conduct of each of the lawyers are not in any  
6 way in issue. If you have formed opinions of any kind as to  
7 any of the lawyers in this case, favorable or unfavorable, and  
8 I imagine you have some views on that, whether you approved or  
9 disapproved of their behavior, any opinion you may have as to  
10 the lawyers should not enter into your deliberations.

11 Although each of the defendants have been indicted,  
12 you must remember that an indictment is simply an accusation.  
13 It is not evidence. When you go into the jury room, I will  
14 give you a copy of the indictment as well so you will have it  
15 there, but it is not evidence. It is just a charge.

16 Mr. Owimrin and Mr. Shahram Ketabchi have each pled  
17 not guilty to the two charges in the indictment against each of  
18 them. As a result -- and this is another theme -- the burden  
19 is on the government to prove the guilt of each defendant  
20 beyond a reasonable doubt. That burden never shifts to the  
21 defendants, for the same reason that the law never imposes upon  
22 a defendant in a criminal case the burden or duty of calling  
23 any witness or producing any evidence.

24 The law presumes each defendant to be innocent of each  
25 of the charges against each defendant. I, therefore, instruct

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1 you, ladies and gentlemen of the jury, that you are to presume  
2 each defendant innocent throughout your deliberations, until  
3 such time, if ever, you as a jury are satisfied that the  
4 government has proven that defendant's guilt, the guilt of the  
5 defendant you are considering beyond a reasonable doubt.

6 Mr. Owimrin and Mr. Shahram Ketabchi begin the trial  
7 here with a clean slate. This presumption of innocence alone  
8 is sufficient to acquit each of the defendants unless you, as  
9 jurors, are unanimously convinced beyond a reasonable doubt of  
10 the guilt of the defendant you are considering after a careful  
11 and impartial consideration of all of the evidence that has  
12 been presented to you.

13 If the government fails to sustain its burden, you  
14 must find the defendant you are considering not guilty. This  
15 presumption of innocence was with each defendant when the trial  
16 began and remains with them now as I speak to you and will  
17 continue with each of the defendants into your deliberations,  
18 unless and until you are convinced the government has proven  
19 their guilt beyond a reasonable doubt.

20 Now, you've heard me throughout this trial mention the  
21 phrase "proof beyond a reasonable doubt." I have said the  
22 government must prove each defendant's guilt beyond a  
23 reasonable doubt. The question naturally arises, ladies and  
24 gentlemen, what's a reasonable doubt? The words almost define  
25 themselves. It is a doubt based upon reason and common sense.

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1 It is a doubt that a reasonable person has after carefully  
2 weighing all of the evidence. It is a doubt that would cause a  
3 reasonable person to hesitate to act in a matter of importance  
4 in his or her personal life.

5 Proof beyond a reasonable doubt must, therefore, be  
6 proof of such a convincing character that a reasonable person  
7 would not hesitate to rely and act upon it in the most  
8 important of his or her own affairs. A reasonable doubt,  
9 ladies and gentlemen, is not a caprice or a whim, it is not  
10 speculation, it is not suspicion, it is not an excuse to avoid  
11 performing an unpleasant duty and it is not sympathy.

12 In a criminal case, the burden is at all times on the  
13 government to prove guilt beyond a reasonable doubt. The law  
14 does not require that the government prove guilt beyond all  
15 possible doubt. Proof beyond a reasonable doubt is sufficient  
16 to convict. This burden never shifts to the defendants, which  
17 means it is always the government's burden to prove each of the  
18 elements of the crimes charged beyond a reasonable doubt.

19 If, after a fair and impartial consideration of all of  
20 the evidence, you have a reasonable doubt about the guilt of  
21 the defendant, it is your duty to acquit that defendant. On  
22 the other hand, if, after a fair and impartial consideration of  
23 all of the evidence, you are satisfied of that defendant's  
24 guilt beyond a reasonable doubt, you should vote to convict.

25 Now, what is evidence? You know what evidence is

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1 because I have told it to you starting from the beginning of  
2 the trial. Evidence is primarily the testimony of the  
3 witnesses, the exhibits that have been received and the  
4 stipulations you've heard, both stipulations of fact and  
5 stipulations of evidence.

6 There are two types of evidence: Direct evidence and  
7 circumstantial evidence, and you know that direct evidence is  
8 presented when a witness testifies to a fact based on what that  
9 witness personally saw, heard or did. It's a fact that is  
10 known to that witness's own knowledge by virtue of what that  
11 witness sees, feels, touches or hears, and you know the second  
12 type of evidence is circumstantial evidence. You'll remember  
13 the example I gave you. A person comes into the back of the  
14 courtroom, perhaps today or yesterday, and there is a wet  
15 umbrella. You can't look outside because if you turn around,  
16 you will see I drew my drapes or drew your drapes. So you  
17 don't know if it is raining outside, but you have direct  
18 evidence that the umbrella is wet, so you can infer from that  
19 that it's raining outside.

20 It is a reasonable inference to draw, that is all  
21 there is to circumstantial evidence, using reasonable common  
22 sense to infer to a fact that is not observed -- and you'll  
23 remember I also said maybe it is not raining outside, maybe  
24 that the witness put the umbrella under a faucet. Those are  
25 issues for you to decide.

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1           The law does not value direct above circumstantial  
2 evidence or circumstantial evidence above direct. It is for  
3 you to decide how much weight to give any piece of evidence  
4 that you accept and for you to reject any piece of evidence  
5 that you don't find credible.

6           Circumstantial evidence can be given as much weight as  
7 direct evidence. The law makes no distinction between direct  
8 and circumstantial evidence, but simply requires that before  
9 convicting the defendant, you, the jury, must be satisfied with  
10 that defendant's guilt beyond a reasonable doubt based on the  
11 evidence in this case.

12           What is not evidence? Again I went through that at  
13 the beginning of the trial. An indictment is not evidence.  
14 The statements and arguments of the lawyers are not evidence.  
15 Anything I've said is not evidence. Questions put to witnesses  
16 are never evidence. It is only the answer that is evidence.

17           Similarly, if I've directed you to disregard anything  
18 a witness said, you must disregard that. You cannot consider  
19 that answer in any way if I've told you to disregard it or for  
20 that matter if I've stricken the answer from the record.

21           Don't draw any inference for or against any party by  
22 reason of a lawyer's objections or, for that matter, any of my  
23 rulings on the objections. Counsel have an obligation to  
24 object if they think a question is being asked that is  
25 improper. Don't hold it against either party because that

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1 party's lawyer was making objections.

2 Don't draw any inference from any of my rulings. My  
3 rulings, as a result of the objections of the lawyers or  
4 whatever was discussed at sidebar, have to do with legal  
5 matters, and that has nothing to do with your job. Your job is  
6 to determine the facts in this case and whether or not the  
7 government has met its burden of proof.

8 Any questions that I may have asked a witness -- and  
9 you saw that I did ask questions -- are almost certainly  
10 questions that I asked in order to help elucidate things for  
11 you that I think may be unclear, but I have no view of the  
12 facts of this case, ladies and gentlemen, because that is not  
13 my job. I have no views on the credibility of any witness, the  
14 weight of the evidence or how you should decide any issue in  
15 regard to the facts. That is for you.

16 Now, you have heard evidence about testimony seized in  
17 connection with a search that was conducted by law enforcement  
18 officers. You will remember that testimony. Evidence obtained  
19 from that search was properly admitted in this case and may be  
20 properly considered by you. Whether you approve or disapprove  
21 of how it was obtained by law enforcement officers must not  
22 enter into your deliberations. I now instruct you the  
23 government's use of that evidence obtained as a result of a  
24 search is entirely lawful. Therefore, regardless of your  
25 personal opinions, you must give that evidence full

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1 consideration along with all the other evidence in the case  
2 when you're determining whether or not the government has  
3 proven each defendant's guilt beyond a reasonable doubt.

4 Now, you've also seen text messages, emails and  
5 recordings of telephone conversations that have been admitted  
6 into evidence. I instruct you that all of that evidence was  
7 obtained in a lawful manner. No one's rights were violated.  
8 The government's use of that evidence is entirely lawful. So  
9 regardless of any personal views you may have regarding the  
10 obtaining of that evidence, you must give that evidence full  
11 consideration along with all the other evidence here in  
12 determining whether the government has met its burden of proof.  
13 What weight you give those materials, if any, is entirely up to  
14 you.

15 Now, you will remember that I allowed the government  
16 to hand out transcripts prepared by the government containing  
17 what the government believes appeared on the recordings that  
18 were in evidence. You know that the transcripts are simply  
19 aids to you. What you heard on the recording, that is  
20 important and that is the evidence. The transcripts are simply  
21 to help you understand what the words are. You will make your  
22 own interpretation of what appears on the tapes based on what  
23 you heard. If you believe you heard something different from  
24 what appears in the transcripts, what you heard is controlling.

25 Now, you've heard evidence in the form of stipulations

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1 of fact. We had a number of those. A stipulation of fact is  
2 simply an agreement among the parties that a certain fact is  
3 true, and you have to regard such agreed facts as true. You  
4 have also heard stipulations of testimony, which are  
5 stipulations that are an agreement between the parties that if  
6 somebody was called as a witness, that witness would have given  
7 certain testimony. Again, you must accept as true that witness  
8 would have given that testimony and you consider it as evidence  
9 in this case, but you determine what effect to give that  
10 testimony.

11 Now, you also will remember that in a lot of the  
12 exhibits that were put up on the screen, there were black marks  
13 where words were deleted. In legal terms, the words were  
14 redacted. "Redacted" is simply a word that means part of the  
15 document was taken out. You must concern yourself only with  
16 that part of the document that has been admitted into evidence.  
17 Don't consider any possible reason why a part of it was blacked  
18 out. What was blacked out has nothing to do with your  
19 consideration.

20 Now, some of the exhibits that were admitted into  
21 evidence were in the form of charts and summaries. You'll  
22 remember that as well. You must consider them as you would any  
23 other evidence because I admitted them into evidence. Now,  
24 there were also summary charts and exhibits that were shown to  
25 you but were not admitted into evidence, and if I didn't admit

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1 something in evidence, there were simply summaries or analyzes  
2 of documents and testimonies and again were simply aids. It is  
3 the underlying evidence, the underlying documents that are the  
4 evidence here.

5 To the extent that the charge conforms to what you  
6 determine to be the underlying facts, you can accept them. To  
7 the extent the charts differ from what you determine the  
8 underlying evidence to be, you may reject them, and that goes  
9 for a chart or summary that I said was simply being admitted as  
10 an aid, but not in evidence. The charts and summaries that I  
11 admitted into evidence are evidence and to be considered by you  
12 along with all the other evidence.

13 Now, you had an opportunity to observe all of the  
14 witnesses. Now you have to decide who you believe. You have  
15 to decide what part of each witness's testimony to believe. A  
16 witness could believe that that witness was being truthful, yet  
17 that witness could be mistaken and not able to recall facts  
18 accurately, and a witness could take the oath and still  
19 intentionally testify falsely.

20 How do you decide who to believe and who not to  
21 believe and those areas of that witness's testimony that you  
22 believe, what weight to put on it. I can't give you any hard  
23 and fast rules. Consider whether the witness told the truth  
24 and whether they knew what they were talking about.

25 In doing so, use your common sense, your good judgment

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1 and your life's experience. Again, there are no hard and fast  
2 rules, but a good rule is use your common sense, your good  
3 judgment, your life's experience. I may have told you at the  
4 beginning of the trial about an experience I had. I don't  
5 remember whether I did or not.

6 Sometimes federal judges have to decide the facts. In  
7 other words, sometimes there are not juries, so I have to  
8 decide the facts, I have to decide the credibility of the  
9 witnesses. Again, that is not now. You're the jury, so you  
10 decide the credibility of the witnesses, but I went to a  
11 conference by the Federal Judicial Center -- did I tell you  
12 this story? I don't think I did.

13 It was a couple of days long. The Federal Judicial  
14 Center is the arm of the judiciary that handles judicial  
15 education, and it was a couple of days, two or three days, and  
16 there were a couple of hundred federal judges, and the topic  
17 was how to determine the credibility of witnesses, and there  
18 were a psychologist up there and there were experts of various  
19 sorts that talked to us, and we had even some simulations where  
20 sort of like to tell the truth, you know, people were being  
21 witnesses and telling stores, and we had these electronic  
22 voting things, and we would click if we thought the person was  
23 telling the truth or not telling the truth.

24 I can tell you two things: One is federal judges --  
25 and they did a bell curve on who was right and who wasn't -- I

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1 can tell you two things: One is federal judges are no  
2 different than the average person in terms of being able to  
3 judge credibility, but more importantly, I learned nothing  
4 during those two or three days. There really are not rules.  
5 Again electronic voting and psychologists telling us what to  
6 look for. Every day of your life you decide who you trust and  
7 who to believe and who you don't, whether you're talking to  
8 your children or buying something, getting a cup of coffee,  
9 whatever, however you do that, that is really the core of your  
10 job.

11 Use your good judgment, your life's experience and  
12 your common sense. In that connection, do things to consider  
13 how good an opportunity the witness had to observe or hear what  
14 that witness was testifying about. A witness can be honest but  
15 mistaken. How did the witness's testimony impress you? Do you  
16 think the witness was testifying honestly and candidly? Was  
17 the witness's direct, the witness's response to the answers  
18 direct? Do you think they were evasive? What was the  
19 witness's demeanor? What was the strength and accuracy of the  
20 witness's recollection?

21 Do you think any outside factors affected that  
22 witness's ability to perceive events? What about the substance  
23 of what they were talking about? Was the witness  
24 straightforward? Do you think the witness was trying to hide  
25 something? How did that witness's testimony compare with other

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1 evidence in this case?

2 Was it corroborated by other evidence? Was it  
3 contradicted by other evidence? If the witness made statements  
4 in the past that are inconsistent with that witness's  
5 statements during the trial concerning the facts that the  
6 witness is questioned about, you can consider that in deciding  
7 how much of the witness's testimony to believe. You can  
8 consider whether the witness purposefully made a false  
9 statement or perhaps it was an innocent mistake.

10 Consider whether the inconsistency involves what you  
11 consider to be an important fact or whether it has to do with a  
12 small detail. Did the witness have an explanation for the  
13 inconsistency? If so, did that explanation appeal to your  
14 common sense and your life's experience?

15 Consider whether a witness had any bias, any  
16 relationship to a party, any motive to testify falsely or any  
17 possible interest in the outcome of the case. Such a bias or  
18 relationship does not necessarily make the witness unworthy of  
19 belief, but these are factors that you are able to consider.

20 Take into account any evidence that the witness who  
21 testified may benefit in some way from the outcome of the case.  
22 Such interest in the outcome creates a motive to testify  
23 falsely and may sway that witness to testify in a way that it  
24 advances that you witnesses' own interest. Therefore, if you  
25 find that any witness whose testimony you are considering may

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1 have an interest in the outcome of the trial, bear that factor  
2 in mind when you're evaluating the credibility of the witness's  
3 testimony and accept it with great care.

4 But I don't mean to suggest that every witness who has  
5 an interest in the outcome of the case will testify falsely.  
6 It is for you to decide to what extent, if at all, the  
7 witness's interest has affected or colored that witness's  
8 testimony. It is for you, the jury, and for you alone, not the  
9 lawyers or any of the witnesses, and not me to decide the  
10 credibility of the witnesses who appeared before you and the  
11 weight that that testimony deserves.

12 I should tell you, ladies and gentlemen, that the  
13 charge, when you get it, every page has a line across it. That  
14 is simply from the printer in my Chambers. Don't worry about  
15 that line. It has nothing to do with the charge.

16 Now, you have heard evidence during the trial on  
17 questioning by lawyers from the witnesses. Those witness have  
18 discussed the facts of the case in their testimony with their  
19 lawyers before the witnesses appeared in court. Although you  
20 may consider that fact when you're evaluating a witness's  
21 credibility, there is nothing unusual or improper about a  
22 witness meeting with lawyers before they testify so that the  
23 witness can be aware of the subjects the witness is going to be  
24 questioned about and to focus on those subjects, and to have  
25 had the opportunity to review the relevant exhibits before

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1 being questioned about them. Those types of consultations and  
2 meetings, ladies and gentlemen, help conserve your time and my  
3 time. Indeed, it would be unusual for a lawyer to call a  
4 witness without such consultations.

5 Again, the weight you give to the fact or nature of  
6 the witness's preparation for that witness's testimony and what  
7 inferences you draw from such preparation and meetings are  
8 matters totally within the discretion of the ladies and  
9 gentlemen of the jury.

10 You also have heard the testimony of a law enforcement  
11 official. The fact that a witness may be employed as a law  
12 enforcement official does not mean that that witness's  
13 testimony is necessarily deserving of more or less  
14 consideration or greater or lesser weight than that of an  
15 ordinary witness. At the same time, it is legitimate for a  
16 defense counsel to try to attack the credibility of a law  
17 enforcement witness, on the grounds that witness's testimony  
18 may be colored by a personal or professional interest in the  
19 outcome of the case. It is for you to decide whether to accept  
20 the testimony of any law enforcement witness and to give that  
21 testimony the weight, if any, you find it deserves.

22 I have permitted during this trial for a witness to  
23 express that witness's opinions about matters that are in issue  
24 and are within that witness's area of expertise. A witness may  
25 be permitted to give an opinion on those matters about which

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1 that witness has special knowledge, skill, experience and  
2 training, and you'll remember I allowed at least one witness to  
3 give opinion testimony. That testimony is presented to you on  
4 the theory that someone who is experienced and knowledgeable in  
5 the field is able to assist you in understanding the evidence  
6 in reaching an independent decision on the facts.

7 In weighing that evidence, consider that expert's  
8 qualificatins, opinions, reasons for testifying and everything  
9 else that you would consider in terms of an ordinary witness.  
10 Give the opinion testimony the weight, if any, you find it  
11 deserves, but don't accept opinion testimony simply because I  
12 allowed that witness to testify as to his opinion. Nor do I  
13 want you -- nor are you permitted -- to substitute it for your  
14 own reasoned judgment and common sense.

15 You have heard the testimony of witnesses who have  
16 pled guilty to charges arising out of facts that were related  
17 to the issues in this case, and you'll remember from the  
18 summations there was a great deal of presentation by the  
19 lawyers about the testimony of the cooperating witnesses.

20 I instruct you that you are to draw no conclusion or  
21 inference of any kind about the guilt of the defendants on  
22 trial from the fact that a prosecution witness has pled guilty  
23 to a similar charge. The decision of that cooperating witness  
24 to plead guilty was a decision personal to that witness, a  
25 decision, in other words, that that witness made about his own

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1 guilt. It may not be used by you in any way as evidence  
2 against either of the defendants on trial here. If other  
3 people pled guilty, they pled guilty because of their  
4 situation. You can't reason that because somebody else pled  
5 guilty, the defendants here are guilty.

6 There is nothing improper, ladies and gentlemen, in  
7 the government's use of a cooperating witness. Don't concern  
8 yourself with how you feel about the use of a government  
9 cooperator. Your concern is to decide, as you know, whether  
10 the government has proven the guilt of each defendant beyond a  
11 reasonable doubt regardless of whether evidence was obtained by  
12 use of a cooperating witness.

13 It is the law in federal courts that the testimony of  
14 a cooperating witness may be enough in itself for conviction if  
15 you find that that testimony establishes guilt beyond a  
16 reasonable doubt. Where a cooperating witness testifies, that  
17 testimony should be examined with greater scrutiny than the  
18 testimony of an ordinary witness. You should consider whether  
19 the cooperating witness received any benefits or promises from  
20 the government or otherwise benefited from his cooperation with  
21 the government that would motivate that witness to testify  
22 falsely against either of the defendants.

23 It does not follow, however, that simply because a  
24 person has admitted to participating in whatever crimes, that  
25 that witness is incapable of giving truthful testimony. I have

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1 given you some considerations on credibility. I am not going  
2 to repeat them here.

3 However, I do want to say a few things that you may  
4 want to consider when thinking about the testimony of a  
5 cooperating witness. Ask yourselves whether the cooperating  
6 witness would benefit more by lying or by telling the truth.  
7 Do you think their testimony was made up in some way because  
8 they believed or they somehow received favorable treatment if  
9 they testify falsely before you?

10 Or do you think they believed their interests would be  
11 best served by testifying truthfully? If you believe that that  
12 cooperating witness was motivated by hopes of personal gain, is  
13 the motivation one that would cause that witness to lie or was  
14 it one that would cause that witness to tell the truth?

15 Did the motivation color that cooperating witnesses'  
16 testimony?

17 As with any witness, let me emphasize that the issue  
18 of credibility need not be decided in an all-or-nothing  
19 fashion. Even if you find that witness testified falsely in  
20 one part, you can still accept that witness's testimony in  
21 other parts, or you might disregard all of it. You know that  
22 is true of any of the witnesses you heard. Look at all the  
23 evidence in deciding what credibility and what weight, if any,  
24 you will give the cooperating witness.

25 Now, during the trial you heard testimony of witnesses

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1 and argument by counsel that the government did not utilize  
2 specific investigative techniques and, indeed, I believe I have  
3 already charged you on that issue. You can consider these  
4 facts in deciding whether the government has met its burden of  
5 proof because you have to look to all the evidence or lack of  
6 evidence in deciding whether the defendants are guilty or not.

7 But I'm also instruct you that there is no requirement  
8 in the law that the government use any specific investigative  
9 technique to prove its case. Your concern is not what law  
10 enforcement techniques were used or what law enforcement  
11 techniques were not used. Here is that theme again, ladies and  
12 gentlemen. Your concern is simply to determine whether or not,  
13 on the evidence or lack of evidence, the guilt of each  
14 defendant has been proven beyond a reasonable doubt.

15 Shahram Ketabchi called a witness who has given her  
16 opinion of his good character. I believe that was his sister,  
17 if I remember correctly. That testimony is not to be taken by  
18 you as the witness's opinion as to whether Shahram Ketabchi is  
19 guilty or not guilty. That is for you to decide, not that  
20 witness. You should consider this character evidence together  
21 with all the facts and all the other evidence in the case in  
22 determining whether Shahram Ketabchi is guilty or not guilty of  
23 the charges against him.

24 Accordingly, if after consideration of all of the  
25 evidence, including the sister's testimony about his good

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1 character, you find a reasonable doubt has been created, you  
2 must acquit him of the charges. On the other hand, if, after  
3 considering all of the evidence, including the evidence from  
4 his sister of his character, you are satisfied beyond a  
5 reasonable doubt that Shahram Ketabchi is guilty, you should  
6 not acquit him merely because you believe him to be a person of  
7 good character.

8 Now I have told you this before. I am going to tell  
9 it to you again. A defendant in a criminal case never has any  
10 duty to testify or come forward with any evidence. This is  
11 because the burden of proof beyond a reasonable doubt remains  
12 with the government at all times and the defendant is presumed  
13 innocent.

14 Here both Mr. Owimrin and Mr. Shahram Ketabchi  
15 independently decided to testify, and they were subject to  
16 cross-examination just as any other witness. You should  
17 examine and evaluate their testimony just as you would the  
18 testimony of any witness with an interest in the outcome of the  
19 case.

20 Now, there has been a fair amount of testimony here  
21 about people who are not on trial before you. You may not draw  
22 any inference, favorable or unfavorable, toward the government  
23 or Mr. Owimrin or Mr. Shahram Ketabchi from the fact that  
24 anyone other than those two defendants is not on trial here.  
25 You may not speculate as to the reasons why other people are

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1 not on trial, all right? Those matters are wholly outside of  
2 your concern and they have no bearing on your function as  
3 jurors.

4 I told you earlier that a defendant must have acted  
5 knowingly in order to be convicted. This is true with respect  
6 to the objects of the conspiracy charged in Count 1 and in  
7 Count 2. In determining whether each defendant acted knowingly  
8 with respect to the objectives of the conspiracy, you may  
9 consider whether that defendant closed his eyes to what  
10 otherwise would have been obvious to him. This is what the  
11 phrase conscious avoidance refers to. Then you remember in at  
12 least one summation, perhaps in more than one, the lawyer and  
13 lawyers were talking about conscious avoidance.

14 As I've told you before, acts done knowingly must be a  
15 product of a person's conscious intention. They cannot be the  
16 result of carelessness, negligence or foolishness, but a person  
17 may not intentionally remain ignorant of the fact that is  
18 material and important to his conduct in order to escape the  
19 consequences of criminal law.

20 We refer to this notion of intentionally blinding  
21 yourself to what is staring you in the face as conscious  
22 avoidance. An argument by the government of conscious  
23 avoidance is not a substitute for proof of knowledge. It is  
24 simply another factor that you, the jury, may consider in  
25 deciding what that defendant knew. Thus, if you find beyond a

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1 reasonable doubt that the defendant you are considering was  
2 aware that there was a high probability that a fact was so, but  
3 that the defendant deliberately avoided confirming that fact,  
4 such as by purposely closing his eyes to it or intentionally  
5 failing to investigate, then you may treat this avoidance of  
6 positive knowledge as the equivalent of knowledge.

7         You must also keep in mind there is an important  
8 difference between intentionally participating in a conspiracy  
9 on one hand and knowing the specific object or objects of the  
10 conspiracy on the other. You may consider conscious avoidance  
11 in deciding whether the defendant knew the objective or  
12 objectives of the conspiracy, that is, whether the defendant  
13 reasonably believed that there was a high probability that a  
14 goal of the conspiracy was to commit the crimes charged as  
15 objects in that conspiracy and deliberately avoided confirming  
16 that fact, but participated on the conspiracy anyway.

17         The conscious avoidance cannot be used as a substitute  
18 for finding that the defendant intentionally joined the  
19 conspiracy in the first place. It is logically impossible for  
20 a defendant to intend and agree to join a conspiracy if he does  
21 not actually know it exists, and that's the distinction I am  
22 drawing.

23         In sum, if you find that the defendant you are  
24 considering believed that there was a high probability that a  
25 fact was so, and that that defendant deliberately and

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1 consciously avoided learning the truth of that fact, you may  
2 find that that defendant acted knowingly with respect to that  
3 fact.

4           However, if you find that the defendant actually  
5 believed the fact was not so, then you may not find that he  
6 acted knowingly with respect to that thing. You must judge  
7 from all the circumstances and all the proof whether the  
8 government did or did not satisfy its burden of proof beyond a  
9 reasonable doubt.

10           Now, I've been giving you instructions on general  
11 matters. I now am going to turn to the indictment itself.  
12 I'll go through what the indictment charges. I'll go through  
13 the elements of each of the two counts in this indictment and  
14 then I'll give you some concluding instructions and then you  
15 can begin your deliberations if we have time tonight.  
16 Otherwise, tomorrow morning.

17           The defendants, Andrew Owimrin, also known as Andrew  
18 Owens, and also known as Jonathan Stewart, and Shahram  
19 Ketabchi, also known as Steve Ketabchi, have been charged in an  
20 indictment, and you know that this indictment is simply an  
21 accusation. It is simply the means that starts a criminal  
22 case. It is not evidence. It is not proof of guilt. It  
23 creates no presumption. It permits no inference by you that  
24 either of the defendants are guilty. Give no weight to the  
25 fact that there has been an indictment here. In fact, as you

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1 know, each defendant has pled not guilty.

2 This indictment -- and again you'll have it in the  
3 room with you, and I will give you as many copies of it as you  
4 want -- has two counts or charges. Count 1 charges that from  
5 approximately October 2013 up to approximately March 2017, each  
6 of the defendants conspired, that is, agreed with at least one  
7 other person to violate the federal statute that makes it  
8 unlawful to commit wire fraud. A conspiracy such as that  
9 charged in Count 1 is a criminal agreement to violate the law.  
10 It is Count 1, conspiracy to commit wire fraud.

11 Count 2 charges that from the same time period, that  
12 is, October 2013 to March 2017, approximately, the defendants  
13 agreed with at least one other person to violate the federal  
14 statute that makes it unlawful to commit money laundering. You  
15 have to consider each count separately and you have to consider  
16 each defendant separately. When you do retire to deliberate, I  
17 am going to give you a verdict form which will help you  
18 structure your deliberations; in other words, it will have  
19 question one, which you will answer; two, and so forth and you  
20 just go right down the verdict form.

21 But you do have to consider each count separately. I  
22 suggest you consider Count 1 first and then Count 2, and you  
23 have to consider each defendant separately on each count  
24 whether you find the defendant you are considering guilty or  
25 not guilty as to one count cannot affect your verdict as to the

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1 guilt or non-guilt of that defendant on the other count, right?  
2 Each count is separate and each defendant is separate. All  
3 right. Let me tell you about the elements of Count 1 and Count  
4 2.

5 First I'm going to charge you on the law of  
6 conspiracy, and you know that Count 1 is conspiracy to commit  
7 wire fraud, Count 2 is conspiracy to commit money laundering,  
8 so you will apply the elements of conspiracy to each Count 1  
9 and Count 2. Count 1 and Count 2 require proof of a  
10 conspiracy; that is, the existence of a conspiracy and the  
11 defendant's membership in that conspiracy. I will unpack that  
12 now.

13 A conspiracy is a type of criminal partnership, an  
14 agreement of two or more people to join together to accomplish  
15 an unlawful purpose. The crime of conspiracy, which simply  
16 means agreement to violate a federal law, is itself a crime;  
17 and, hence, Count 1 and Count 2.

18 It is separate and distinct from the actual violation  
19 of any specific law, which the law refers to as substantive  
20 crimes. You can find a defendant guilty of the crime of  
21 conspiracy even if you find that the substantive crime, which  
22 was the object of the conspiracy, was never committed.  
23 Congress has deemed it appropriate to make conspiracy by itself  
24 a separate crime even if the conspiracy was not successful. To  
25 sustain its burden of proof with respect to an allegation of

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1 conspiracy, the government must prove beyond a reasonable doubt  
2 the following two elements:

3 First, the government must prove the existence of the  
4 conspiracy charged in the indictment, that is, the existence of  
5 the agreement or understanding to commit the unlawful objects  
6 of the conspiracy;

7 Second, the government must prove that the defendant  
8 willfully and knowingly became a member of the conspiracy with  
9 the intention of furthering its illegal purpose, that is, with  
10 the intention to commit an object of the charged conspiracy.

11 So now let's look at the two elements of conspiracy  
12 law. One is the existence of the conspiracy and two is the  
13 membership in a conspiracy. Was the defendant you are  
14 considering a member of the conspiracy? Again, a conspiracy is  
15 an agreement of at least two people to violate a federal law.

16 In order to show that a conspiracy existed, the  
17 evidence must show that two or more people in some way or  
18 manner, through any contrivance, explicitly or implicitly, that  
19 is, spoken or unspoken, came to an understanding to violate the  
20 law and to accomplish an unlawful plan. Express language or  
21 specific words are not required to indicate assent or  
22 attachment to a conspiracy. If you find beyond a reasonable  
23 doubt that two or more persons came to an understanding,  
24 express or implied, to violate the law and to accomplish an  
25 unlawful plan, then the government will have sustained its

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1     burden of proof as to this element.

2             To satisfy this element of a conspiracy, namely, to  
3     show that a conspiracy existed, the government is not required  
4     to show two or more people sat around a table and entered into  
5     a solumn pact, orally or in writing, stating they have formed a  
6     conspiracy to violate the law and spelling out all the details.

7             Common sense tells you that when people, in fact,  
8     agree to enter a criminal conspiracy, much is left to the  
9     unexpressed understanding. It is rare, indeed, that a  
10    conspiracy is proven by direct evidence of an explicit  
11    agreement. Conspirators do not generally reduce their  
12    agreements to writing or have them notarized before a notary  
13    public and they normally don't publicly broadcast they have  
14    agreed to violate a federal law.

15            From its very nature, conspiracy is invariably secret  
16    in its origin and execution. In determining whether or not an  
17    agreement to violate a federal law existed, you may consider  
18    direct and circumstantial evidence. The old adage actions  
19    speak louder than words certainly applies here. Often the only  
20    evidence that is available with respect to the existence of a  
21    conspiracy is that of disconnected acts and conduct on the part  
22    of the alleged individual co-conspirators.

23            When taken together and considered as a whole,  
24    however, these acts and conduct may warrant an inference that a  
25    conspiracy existed as conclusively as with direct proof such as

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1 evidence of express agreement. On this question, you should  
2 refer back to my earlier instructions on direct and  
3 circumstantial evidence and inferences.

4 In short, as far as the first element of the  
5 conspiracy is concerned, the government must prove beyond a  
6 reasonable doubt at least two alleged co-conspirators came to a  
7 mutual understanding, either spoken or unspoken, to violate the  
8 law in the manner charged in Count 1 and Count 2. If you  
9 decide that the government has proven beyond a reasonable doubt  
10 that the conspiracy charged in Count 1 or Count 2 existed, then  
11 go on to consider the second element of conspiracy law:

12 Did the defendant you are considering participate in  
13 the conspiracy knowing its unlawful purpose and in furtherance  
14 of its unlawful objective?

15 In order to satisfy this element, the government must  
16 prove beyond a reasonable doubt that the defendant you are  
17 considering knowingly and willfully entered into the conspiracy  
18 with a criminal intent, that is, in order to violate the law  
19 and that he agreed to take part in the conspiracy to further  
20 promote and cooperate in its unlawful objective.

21 Now, there has been a lot of talk about whether an act  
22 is done knowingly and willfully. An act is done knowingly and  
23 willfully if it is done deliberately and purposefully; that is,  
24 the defendant's actions must have been his conscious objective  
25 rather than a product of a mistake or an accident or negligence

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1 or some other innocent reason.

2 To satisfy its burden of proof that a defendant  
3 willfully and knowingly became a member of the conspiracy to  
4 accomplish an unlawful objective, the government must prove  
5 beyond a reasonable doubt that the defendant you are  
6 considering knew that he was a member of an operation or  
7 conspiracy to accomplish that unlawful purpose and that his  
8 action of joining such an operation or conspiracy was not due  
9 to being careless or being negligent, because of a mistake on  
10 the part of that defendant.

11 Now, knowledge, you realize, is a matter of inference  
12 from proven facts. I am pleased to be able to tell you that  
13 science has not yet figured out a way of looking into  
14 somebody's mind and knowing what that person is thinking. That  
15 is something you're to do here based on the evidence in this  
16 case. You do have before you the evidence of acts alleged to  
17 have taken place by or with the defendants or in their  
18 presence.

19 A defendant's knowledge is essentially a matter of  
20 inference that you are permitted to draw from the facts in  
21 evidence here. I do instruct you that to become a member of a  
22 conspiracy, the defendant need not have known the identities of  
23 all the other members of the conspiracy. He need not have been  
24 appraised of all the activities of the other members. He need  
25 not have been fully informed as to the details or the scope of

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1 the conspiracy in order to justify an inference by you of  
2 knowledge by that defendant.

3 The duration and extent of a defendant's participation  
4 in the conspiracy that you are considering has no bearing on  
5 the issue of that defendant's guilt. He need not have joined  
6 the conspiracy in the beginning. He may have joined it at any  
7 time in its progress, and that defendant will still be held  
8 responsible for all that was done before he joined the  
9 conspiracy and all that was done during the conspiracy's  
10 existence while he was still a member.

11 Indeed, each member of a conspiracy may very well  
12 perform separate and distinct acts and may perform them at  
13 different times. That makes no difference. Some conspirators  
14 play major roles in a conspiracy and others play minor roles in  
15 a conspiracy. An equal role is not required by law. In fact,  
16 even a single act by the defendant you are considering may be  
17 sufficient to draw that defendant within the ambit of the  
18 charged conspiracy.

19 However, I do want to caution you that a defendant's  
20 mere presence at the scene of a crime does not by itself make  
21 him a member of the conspiracy. A person may know or be  
22 friendly with one or more members of a conspiracy and not be a  
23 conspirator himself. I also caution you that mere knowledge or  
24 acquiescence, without participation in the unlawful plan, is  
25 not sufficient. What is necessary is that a defendant must

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1 have participated with knowledge of at least some of the  
2 purposes or objects of the conspiracy, with the intention of  
3 aiding in the accomplishment of those unlawful ends.

4 Once a conspiracy is formed, it is presumed to be  
5 continue until either its objective is accomplished or there is  
6 some affirmative act of termination by the members. So, too,  
7 once a person is found to be a member of a conspiracy, he is  
8 presumed to continue as a member of a conspiracy until a  
9 conspiracy is terminated unless it is shown by some affirmative  
10 proof that the person withdrew and disassociated himself from  
11 it.

12 If you find a conspiracy existed and that the  
13 defendant was a member, you may take into account against the  
14 defendant any acts or statements made during and in furtherance  
15 of the conspiracy and any of his co-conspirators, even though  
16 such acts or statements were not made in the presence of the  
17 defendant or even if they were made without his knowledge.

18 In sum, in order to find the defendant guilty of  
19 conspiracy, you must find that the defendant, with an  
20 understanding of the unlawful character of the conspiracy,  
21 intentionally engaged, advised or assisted in for the purpose  
22 of furthering the illegal undertaking, he thereby becomes a  
23 knowing and willing participant in the unlawful agreement; that  
24 is to say, a conspirator. All right. I have told you about  
25 the law of conspiracy.

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1           Now lets turn specifically to Count 1, conspiracy to  
2       commit wire fraud. Each defendant is charged in Count 1 with  
3       participating in a conspiracy to violate the federal statute  
4       that makes it unlawful to commit wire fraud. Specifically,  
5       Count 1 charges that each defendant agreed with at least one  
6       other person to commit wire fraud by operating telemarketing  
7       schemes that called victims and convinced them to write checks  
8       or authorize credit card charges in order to invest in  
9       purported home-based businesses. The elements of Count 1 are  
10      the elements I just told you about:

11           First, the existence of a conspiracy, the existence of  
12      an agreement or understanding between two or more persons to  
13      commit the unlawful acts, object of the charged conspiracy. In  
14      this case, the object is wire fraud;

15           Second, that the defendant you are considering  
16      willfully and knowingly became a member of the conspiracy.  
17      Remember the first element is did it exist. The second element  
18      is did the defendant become a member. Yes, they became a  
19      member with intent to fulfill its illegal purposes, that is,  
20      with the intent to commit wire fraud.

21           All right. Now let's unpack each of those. The  
22      object of the conspiracy in Count 1, as I told you, is wire  
23      fraud. In order to prove that the defendant you are  
24      considering is guilty of the conspiracy in charged in Count 1  
25      and conspiracy to commit wire fraud, the government has to

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1 establish beyond a reasonable doubt that that defendant agreed  
2 with others to commit wire fraud. The elements of wire fraud  
3 are straightforward:

4 One, that in or about the times alleged in the  
5 indictment, there was a scheme or artifice to defraud others of  
6 money or property by false or fraudulent pretenses,  
7 representations or promises;

8 Two, that the defendant knowingly and willfully  
9 devised or participated in the scheme or artifice to defraud  
10 with knowledge of its fraudulent nature and with the specific  
11 intent to defraud;

12 Three, that the scheme was executed by using or  
13 causing others to use the interstate or foreign wires.

14 If you find beyond a reasonable doubt that the  
15 defendant agreed with at least one other person that those  
16 things be done, then the wire fraud objective will have been  
17 proved.

18 The first element I've talked about, the wire fraud,  
19 its existence of the scheme or artifice to defraud. A scheme  
20 or artifice is simply a plan for the accomplishment of an  
21 illegal object. Fraud is a general term that includes all the  
22 possible means by which someone seeks to gain some unfair  
23 advantage over someone else by means of false representations,  
24 false suggestions, false pretenses or concealing the truth.

25 The unfair advantage sought can involve money,

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1 property or anything whatsoever of value. Therefore, a scheme  
2 to defraud is a plan, device or course of action to deprive  
3 someone else of money or property by means of false or  
4 fraudulent pretenses, representations or promises. It is a  
5 plan to deprive somebody else of money or property by trick,  
6 deceit, deception, swindle or overreaching.

7 (Continued on next page)

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1           THE COURT: In order to establish a scheme to defraud,  
2 the government need not show that the defendant you are  
3 considering made a misrepresentation. A scheme to defraud can  
4 exist even if the scheme did not progress to the point where  
5 misrepresentations would be made. In addition even if you find  
6 that the statements the government contends were made or  
7 contemplated by the defendant in furtherance of the scheme were  
8 literally true, you can still find that the first element of  
9 wire fraud statute has been satisfied if the statements and/or  
10 conduct of that defendant were deceptive. You may also find  
11 the existence of such a scheme if you find that the defendant  
12 you are considering knowingly and intentionally conducted  
13 himself in a manner that departed from traditional notions of  
14 fundamental honesty and fair play in the general business life  
15 of society.

16           A scheme to defraud need not be shown by direct  
17 evidence, but may be established by all the circumstances and  
18 facts in the case.

19           A "pretense, representation or statement" is  
20 fraudulent if it was made falsely and with intent to deceive.  
21 A statement may also be fraudulent if it contains half-truths  
22 or if it conceals material facts in a manner that makes what is  
23 said or represented deliberately misleading or deceptive.

24           A false or fraudulent representation or concealment  
25 must relate to a material fact or matter. A material fact is

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1 one that would reasonably be expected to be of concern to a  
2 reasonable and prudent person in relying upon the  
3 representation or statement in making a decision. That means  
4 that, if you find a particular statement or representation  
5 false, you must determine whether that statement or  
6 representation was one that a reasonable person might have  
7 considered important in making his or her decision. The same  
8 principle applies to fraudulent half-truths or omissions, that  
9 is, failures to disclose facts.

10 In order to satisfy this first element, the government  
11 must also prove that the alleged scheme contemplated depriving  
12 another of money or property. It is not necessary for the  
13 government to establish that the that defendant actually  
14 realized any gain from the scheme or that any particular person  
15 actually suffered any loss as a consequence of the fraudulent  
16 scheme. You must concentrate on whether there was such a  
17 scheme, not on the consequences of the scheme.

18 The second element of wire fraud is that the defendant  
19 devised or participated in the fraudulent scheme knowingly,  
20 willfully, and with the specific intent to defraud.

21 The words "devised" and "participated" are words that  
22 you are familiar with and, therefore, I do not need to spend  
23 much time defining them for you. To "devise" a scheme to  
24 defraud is to concoct or plan it. To "participate" in a scheme  
25 to defraud means to associate oneself with it with a view and

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1 intent toward making it succeed. While a mere onlooker is not  
2 a participant in a scheme to defraud, it is not necessary that  
3 a participant be someone who personally and visibly executes  
4 the scheme to defraud.

5 In order to satisfy this element, it is not necessary  
6 for the government to establish that the defendant originated  
7 the scheme to defraud. It's sufficient if you find that a  
8 scheme to defraud existed, even if it was originated by someone  
9 else, and that the defendant you are considering, while aware  
10 of the scheme's existence, knowingly participated in that  
11 scheme to defraud.

12 It is also not required that the defendant  
13 participated in or had knowledge of all of the operations of  
14 the scheme. The guilt of a defendant is not governed by the  
15 extent of his participation.

16 It also is not necessary that a defendant participated  
17 in the alleged scheme from the beginning. I have told you  
18 that. Someone who comes in at a later point with knowledge of  
19 the scheme's general operation, although not necessarily  
20 knowing all of its details, and intentionally acts in a way to  
21 further the unlawful goals, is a member of the scheme and is  
22 therefore legally responsible for all that may have been done  
23 in the past to further the criminal objective, as well as all  
24 that is done after that person joined the scheme.

25 Even if one defendant participated in the scheme to a

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1 lesser degree than other members of the conspiracy, he is  
2 nevertheless equally guilty, so long as that defendant became a  
3 member of the scheme to defraud knowing its general scope and  
4 purpose.

5 A defendant acted with specific intent to defraud if  
6 that defendant engaged or participated in the fraudulent scheme  
7 with some realization of its fraudulent or deceptive character  
8 and with an intention to be involved in the scheme to defraud  
9 and to help it succeed with a purpose of causing harm to the  
10 victim. The government need not prove that the intended  
11 victims were actually harmed; only that such harm was in fact  
12 contemplated. Actors are presumed to intend the natural and  
13 probable consequences of their actions. So when the necessary  
14 result of the actor's scheme is to injure someone else,  
15 fraudulent intent may be inferred from the scheme itself.

16 The question of whether someone acted knowingly,  
17 willfully, and with specific intent to defraud is a question of  
18 fact for you to determine, like any other fact. This question  
19 involves one's state of mind. As I told you before, direct  
20 proof of knowledge, willfulness, and fraudulent intent is  
21 almost never available. It's rare, as I have said, where it  
22 can be shown that someone wrote or stated that at a given time  
23 he or she committed or intended to commit an act with  
24 fraudulent intent. So I assure you direct proof of fraudulent  
25 intent is not required by law.

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1           The ultimate facts of knowledge and criminal intent,  
2           though subjective, may be established by circumstantial  
3           evidence -- and almost always are -- based upon a person's  
4           manifestations, words, conduct, acts, and all of the  
5           surrounding circumstances disclosed by the evidence and the  
6           rational or logical inferences that may be drawn from those  
7           circumstances.

8           What is referred to as drawing from circumstantial  
9           evidence is no different from what people normally mean when  
10          they say, and I have said, "use your common sense." It means  
11          that when you come to decide whether the defendant you are  
12          considering possessed or lacked an intent to defraud, you need  
13          not limit yourself to just what the defendant said, but you may  
14          also look at what that defendant did, what others did in  
15          relation to that defendant and, in general, everything that  
16          happened.

17          Let me advise you that since an essential element of  
18          the crime charged is intent to defraud, it follows that good  
19          faith on the part of a defendant is a complete defense to a  
20          charge of wire fraud. A defendant has no burden to establish  
21          that he acted in good faith. The burden, as you know, is on  
22          the government to prove fraudulent intent and lack of good  
23          faith beyond a reasonable doubt. Under the antifraud statutes,  
24          even false representations or statements or omissions of  
25          material facts do not amount to a fraud unless done with

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1 fraudulent intent. And you will remember the lawyers talked  
2 about that in their summations. An honest belief in the truth  
3 of the representations made by a defendant is a complete  
4 defense, even though the statements may turn out to be  
5 inaccurate. So fraudulent intent is necessary.

6 Now, the third and final element of wire fraud is that  
7 interstate or foreign wire facilities were used in furtherance  
8 of the scheme to defraud.

9 The requirement of the use of interstate or foreign  
10 wire facilities simply means that the wire communication was  
11 passed between two or more states as, for example, a wire  
12 transfer of funds between New York and some other state, such  
13 as New York, California, or a territory, such as the U.S.  
14 Virgin Islands, or between the United States and some foreign  
15 country.

16 It is not necessary for the defendant you are  
17 considering to be directly or personally involved in any wire  
18 communication, as long as the communication is reasonably  
19 foreseeable in the execution of the alleged scheme to defraud  
20 in which the defendant is accused of participating. In this  
21 regard, it would be sufficient to establish this element of the  
22 crime if the evidence justifies a finding that the defendant  
23 caused the wires to be used by others; and this does not mean  
24 that the defendant himself must have specifically authorized  
25 others to execute the wire transfer. When one does an act with

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1 knowledge that the use of the wires will follow in the ordinary  
2 course of business, or where such use of the wires can  
3 reasonably be foreseen, even though not actually intended, then  
4 that defendant causes the wires to be used.

5 Is that clear? The defendant doesn't actually have to  
6 have transmitted the wire transmission. The wire communication  
7 requirement is satisfied even if the wire communication was  
8 done by somebody with no knowledge of the fraudulent scheme.  
9 It can even be done by a victim of the alleged fraud.

10 The use of the wire itself need not be fraudulent.  
11 The wire communication need not contain any fraudulent  
12 representation, or it doesn't even have to contain a request  
13 for money. It's sufficient if the wire was used to further or  
14 assist in carrying out the scheme to defraud.

15 If you find beyond a reasonable doubt that the  
16 defendant you are considering agreed with others to commit the  
17 offense of wire fraud, as I have just defined it for you,  
18 ladies and gentlemen, you should convict that defendant on  
19 Count One.

20 Now, we are moving forward. We are now going to turn  
21 to Count Two.

22 Count Two charges each of the defendants with  
23 conspiring to engage in money laundering. To prove a defendant  
24 guilty of the conspiracy charged in Count Two, the government  
25 has to prove beyond a reasonable doubt each of the same two

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1 elements I described with respect to Count One; that is, the  
2 existence of the conspiracy and that the defendant you are  
3 considering willfully and knowingly became a member of the  
4 conspiracy with the intent to further its illegal purposes.  
5 And the conspiracy charged in Count Two is conspiracy to commit  
6 money laundering.

7           The instructions I provided earlier about what it  
8 means to have an unlawful agreement and what it means to  
9 knowingly enter into that agreement similarly apply to Count  
10 Two. Keep in mind, you may find a defendant guilty of the  
11 crime of conspiring to commit money laundering even if the  
12 substantive crime of money laundering was not actually  
13 committed. Conspiracy is a crime, even if the conspiracy is  
14 not successful, or even if a defendant itself did not commit  
15 the substantive crime.

16           Now, there is an aspect of Count Two, conspiracy to  
17 commit money laundering, that is different than Count One,  
18 conspiracy to commit wire fraud.

19           Count Two alleges two separate objects. Remember,  
20 Count One alleged only one object, the substantive crime of  
21 wire fraud. Count Two alleges two separate objects.

22           First, it alleges that the defendants agreed to commit  
23 money laundering by engaging in financial transactions that  
24 involved the proceeds of the wire fraud, that is, the  
25 telemarketing fraud, in order to promote the carrying on of the

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1 telemarketing fraud.

2 The second object of the money laundering conspiracy  
3 is that Count Two alleges that the defendants agreed to commit  
4 money laundering by engaging in monetary transactions greater  
5 than \$10,000 involving the proceeds of the telemarketing fraud.

6 The government does not have to prove that each  
7 defendant agreed with others to achieve one of these two  
8 alleged objects in order to convict that defendant on Count  
9 Two. The government may, but it is not obliged, to prove both  
10 for either defendant and need not prove the same object for  
11 both defendants.

12 Here, as I said, there are two alleged objects of the  
13 conspiracy, assuming all the other elements of the offense are  
14 proved. If you unanimously agree that object number one was an  
15 objective of the conspiracy alleged in Count Two, you may  
16 convict even if you disagree on object number two or even if  
17 you think object number two was not part of the conspiracy.  
18 But, for example, if half of you agree on object number one and  
19 half of you disagree, and half of you agree on object number  
20 two and the other half disagree, there is no object as to which  
21 all of you are in agreement and you cannot convict. In other  
22 words, there are two objects. In order to convict -- a better  
23 way to phrase it is, before you can convict one of the  
24 defendants, you have to agree unanimously that at least one of  
25 the objects were met. You can, of course, agree that both

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1 objects were met. You don't have to. You can agree that one  
2 object was met, but it has to be unanimous to agree that an  
3 object has been met.

4 There has to be unanimous agreement on at least one  
5 object in order to find that the conspiracy existed, but you  
6 need not find that both defendants conspired with others to  
7 achieve the same object. You may find that one defendant  
8 agreed with a third party to achieve the first object of money  
9 laundering conspiracy and find that the other defendant agreed  
10 with someone else to achieve the second object of the money  
11 laundering conspiracy.

12 If the government fails to prove that at least one of  
13 the two objects was a goal of any conspiracy you find to have  
14 existed, then you must find the defendants not guilty on Count  
15 Two.

16 The first object of Count Two is what is called  
17 promotional money laundering. In order to prove the first  
18 object of Count Two, the government must prove beyond a  
19 reasonable doubt that the conspirators agreed to accomplish  
20 money laundering by: (1) engaging in financial transactions,  
21 (2) involving the proceeds of specified unlawful activity, (3)  
22 which the conspirators knew were crime proceeds, and (4) that  
23 the conspirators did so with the intent to promote the carrying  
24 on of the specified unlawful activity. I will discuss each of  
25 those in more detail.

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1           In order to prove the first object of Count Two, the  
2 government must prove beyond a reasonable doubt that two or  
3 more persons knowingly agreed to conduct a financial  
4 transaction.

5           The term "conducts" includes the action of initiating,  
6 concluding, or participating in initiating or concluding a  
7 transaction.

8           A "transaction" includes a purchase, sale, loan,  
9 pledge, gift, transfer, delivery, or other disposition of  
10 property.

11           The term "financial transaction" means (1) a  
12 transaction involving a financial institution which is engaged  
13 in, or the activities of which affect, interstate or foreign  
14 commerce in any way or degree, or (2) a transaction which in  
15 any way or degree affects interstate or foreign commerce and  
16 involves the movement of funds by wire or other means, or  
17 involves one or more monetary instruments.

18           A "transaction involving a financial institution"  
19 includes a deposit, withdrawal, transfer between accounts,  
20 exchange of currency, loan, extension of credit, purchase or  
21 sale of any stock, bond, certificate of deposit, or other  
22 monetary instrument, use of a safe deposit box, or any other  
23 payment, transfer, or delivery by, through, or to a financial  
24 institution by whatever means.

25           The term "monetary instrument" includes, among other

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1 things, coin or currency of the United States or any other  
2 country, personal checks, traveler's checks, cashier's checks,  
3 bank checks, money orders, and investment securities or  
4 negotiable instruments in bearer form or otherwise in such form  
5 that title thereto passes upon delivery.

6 The term "interstate or foreign commerce" means  
7 commerce between any combination of states, territories or  
8 possessions of the United States, or between the United States  
9 and a foreign country. Thus, if you find that the source of  
10 the funds used in the transaction affected interstate commerce,  
11 that is sufficient as well. Or, if you find that the  
12 transaction itself involved an interstate transfer of funds,  
13 that would also be sufficient.

14 Now, let's turn to the second element of object one.

15 The second element the government must prove beyond a  
16 reasonable doubt is that the property involved in the agreed  
17 upon financial transaction was the proceeds of some form of  
18 specified unlawful activity, namely, the telemarketing fraud.  
19 The term "proceeds" means any property derived from or obtained  
20 or retained, directly or indirectly, through some form of  
21 unlawful activity, including the gross receipts of such  
22 activity.

23 The term "specified unlawful activity" means any one  
24 of a variety of offenses defined by the statute. In this case,  
25 the government has alleged that the funds in question here were

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1 the proceeds of wire fraud, that is, the telemarketing fraud.  
2 I instruct you, as a matter of law, wire fraud falls within the  
3 definition of a "specified unlawful activity," but it's for you  
4 to determine, based on these instructions, whether wire fraud  
5 was in fact committed and whether the funds in question were  
6 the proceeds of that alleged unlawful activity. It is also not  
7 necessary that the defendant himself committed the crime or  
8 unlawful activity giving rise to the proceeds. In other words,  
9 you don't have to find that the defendant you are considering  
10 committed the underlying wire fraud in order to find that  
11 defendant guilty of the money laundering conspiracy.

12 The third element the government has to prove beyond a  
13 reasonable doubt is that the conspirators agreed to engage in  
14 these financial transactions with knowledge that the  
15 transaction or transactions involved the proceeds of some form,  
16 though not necessarily which form, of unlawful activity that  
17 constitutes a felony under state, federal, or foreign law. The  
18 government does not have to prove that the defendant knew the  
19 precise nature of that criminal offense, or that the defendant  
20 knew that the property involved in the transaction represented  
21 the proceeds of any particular "specified unlawful activity" as  
22 defined by the statute, such as wire fraud. The government  
23 only has to prove that the defendant knew that the transaction  
24 involved the proceeds of some criminal offense.

25 The fourth element the government has to prove beyond

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1 a reasonable doubt is that the conspirators agreed to engage in  
2 these financial transactions with the knowledge that the  
3 purpose of the transaction was to promote the carrying of  
4 specified unlawful activity, namely, the telemarketing fraud.  
5 You are entitled to find from the circumstances surrounding the  
6 financial transactions or attempted financial transactions the  
7 purpose of that activity and the defendant's knowledge and  
8 intent.

9 The second object of Count Two charges the defendants  
10 with conspiring to engage in monetary transactions over \$10,000  
11 in property derived from specified unlawful activity. For you  
12 to find the defendants agreed to commit money laundering, with  
13 the second object of Count Two, you must find that the  
14 defendants agreed:

15 First, to engage in a monetary transaction in or  
16 affecting interstate commerce.

17 Two, that the monetary transaction involved criminally  
18 derived property of a value greater than \$10,000.

19 Third, that the property was derived from specified  
20 unlawful activity.

21 Fourth, that the defendant acted knowingly, that is,  
22 with the knowledge that the transaction involved proceeds of a  
23 criminal offense.

24 Fifth, that the transaction took place in the United  
25 States.

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1 I remind you that you need not find the defendant had  
2 both objectives of Count Two in order to convict that  
3 defendant. It's sufficient if you are unanimous that that  
4 defendant you are considering agreed with others to achieve a  
5 single one of the two unlawful objectives alleged by the  
6 government.

7 The first element that the government must prove  
8 beyond a reasonable doubt is that the defendants agreed to  
9 engage in a monetary transaction in or affecting interstate  
10 commerce.

11 The term "monetary transaction" means the deposit,  
12 withdrawal, transfer, or exchange, in or affecting interstate  
13 or foreign commerce, of funds or a monetary instrument by,  
14 through, or to a financial institution.

15 The term "interstate or foreign commerce" means  
16 commerce between any combination of states, territories or  
17 possessions of the United States, or between the United States  
18 and another country.

19 You must find that the transaction affected interstate  
20 commerce in some way, however minimal that may be. The effect  
21 on interstate commerce can be established several ways. For  
22 example, if you find that the source of the funds used in a  
23 transaction affected interstate commerce, that's adequate. Or  
24 if you find that the transaction itself involved an interstate  
25 transfer of funds, that also is adequate.

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1           The second element the government must prove beyond a  
2 reasonable doubt is that the defendants agreed to engage in  
3 monetary transactions involving criminally derived property  
4 having a value of more than \$10,000.

5           The term "criminally derived property" means any  
6 property constituting, or derived from, proceeds obtained from  
7 a criminal offense. The term "proceeds" has the same meaning I  
8 provided previously with respect to the first object of the  
9 conspiracy.

10          The government is not required to prove that all of  
11 the property involved in the transaction was criminally derived  
12 property, but the government must prove that more than \$10,000  
13 of the property involved was criminally derived property.

14          The third element the government has to prove beyond a  
15 reasonable doubt is that the defendant you are considering knew  
16 that the property involved in the agreed upon financial  
17 transaction or transactions was the proceeds of some form of  
18 unlawful activity.

19          The term "specified unlawful activity" has the same  
20 meaning I gave you earlier.

21          The government must prove that the defendant knew that  
22 the property involved in the transaction represented proceeds  
23 from some form, though not necessarily which form, of activity  
24 that constitutes a felony under state, federal, or foreign law.  
25 I instruct you, as a matter of law, wire fraud is both a

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1 criminal offense and specified unlawful activity.

2 The fourth element which the government must prove  
3 beyond a reasonable doubt is that the defendant agreed to  
4 engage in these financial transactions with knowledge that the  
5 transaction or transactions involved property derived from a  
6 criminal offense.

7 I instruct you that in a prosecution for an offense  
8 under this section, the government is not required to prove  
9 that the defendant knew the particular offense from which the  
10 criminally derived property was derived, but the government  
11 must prove beyond a reasonable doubt that the defendant knew  
12 that the transaction involved criminally derived property,  
13 which I remind you means any property constituting, or derived  
14 from, proceeds obtained from a criminal offense.

15 The fifth element which the government must prove  
16 beyond a reasonable doubt is that the agreed upon transaction  
17 took place in the United States.

18 Now, in addition to all the -- we are closing up now,  
19 ladies and gentlemen. In addition to the foregoing elements of  
20 the offense, you must consider whether the crime charged, or  
21 any act in furtherance of the crime charged, occurred within  
22 the Southern District of New York. The Southern District of  
23 New York is Manhattan, the Bronx, Westchester, Rockland,  
24 Putnam, Sullivan, Orange, and Dutchess Counties.

25 On this issue, and this issue alone, the government

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1 need not prove venue beyond a reasonable doubt. The burden of  
2 proof on the government to prove venue is simply by a  
3 preponderance of the evidence. A "preponderance of the  
4 evidence" means that the government must prove that simply that  
5 it is more likely than not that any act in furtherance of the  
6 count that you are considering occurred in the Southern  
7 District of New York. The government will have satisfied its  
8 venue obligations in regard to each count if you conclude that  
9 it's more likely than not that any act in furtherance of the  
10 crime charged occurred within the Southern District of New  
11 York.

12 I also note that the defendant need not be the  
13 individual who committed or caused the act in furtherance of  
14 the conspiracy, and the act may have been committed by a  
15 co-conspirator, even if the co-conspirator is not the defendant  
16 in this trial.

17 If you find that the government has failed to prove  
18 this venue requirement, then you must acquit the defendants of  
19 the charge.

20 The indictment alleges that certain acts occurred on  
21 or about a specific date. It does not matter if the evidence  
22 at trial indicates that a particular act occurred on a  
23 different date. The law requires only a substantial similarity  
24 between the dates and the amounts alleged in the indictment and  
25 the dates and amounts established by the evidence.

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1           Your sworn duty, ladies and gentlemen, is to determine  
2 whether the defendant is guilty or not guilty solely on the  
3 basis of the evidence or lack of evidence and these  
4 instructions on the law.

5           I tell you again, you are not to be influenced by  
6 sympathy or any assumption, conjecture or inference stemming  
7 from personal feelings, the nature of the charges, or your view  
8 of the seriousness or lack of seriousness of what the  
9 government has charged here in the indictment.

10          Under your oath as jurors, you are not to consider the  
11 punishment that may be imposed upon either of the defendants,  
12 if either of the defendants is convicted. The duty of imposing  
13 a sentence in the event of conviction rests exclusively upon  
14 me, ladies and gentlemen. You are not to consider yourself  
15 with what punishment, if any, will result from your decision.  
16 Your function is to weigh the evidence in the case and to  
17 determine the guilt or nonguilt of each of the defendants  
18 solely on the basis of the evidence and the law that I have  
19 given you.

20          Each of you is entitled to your own opinion, but you  
21 must exchange views with your fellow jurors. This is the  
22 essence of jury deliberation. It's your duty to discuss the  
23 evidence. If you have a point of view and after reasoning with  
24 other jurors it appears that your own judgment is open to  
25 question, then of course you should not hesitate in yielding

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1 your original point of view if you are convinced that the  
2 opposite point of view is really one that satisfies your  
3 judgment and conscience. But you are not to give up a point of  
4 view that you conscientiously believe in simply because you are  
5 outnumbered or outweighed. Vote with the others only if you  
6 are convinced on the evidence and the facts and the law that  
7 that is the correct way to decide this case.

8 Now, you know we have made a record of these  
9 proceedings. As I have told you on a number of occasions, if  
10 you want to have any exhibit brought in to the deliberation  
11 room, the foreperson should simply send me a note that you want  
12 a particular exhibit.

13 Now, be as specific as you can. If you remember the  
14 number, fine, give me the number. If you don't, just be as  
15 specific as you can. Remember, it may take some time for us to  
16 find that exhibit, so be as specific as you can.

17 Similarly, if you want testimony read back, that's  
18 slightly different. The foreperson should send out a note as  
19 to what you want and be as specific as you can. And then we  
20 need to find that testimony, and then we are going to bring you  
21 back into the courtroom and read that testimony to you. The  
22 reporter will read the testimony. I do wish to remind you that  
23 if you want, for example, testimony of somebody, and that  
24 testimony took two days, it may take two days to read it back.  
25 That doesn't mean I am not prepared to give you that testimony.

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1 I will be. But just be aware it takes time to both find the  
2 testimony and to read the testimony back. Again, I repeat,  
3 feel free to ask for whatever testimony you want. It's a  
4 service that we can offer you.

5 In any note you send me, do not give me any indication  
6 of your thinking on any disputed issue. Don't give me any  
7 preliminary vote titles or anything like that.

8 And as I said, you will have the indictment, you will  
9 a copy of the charge, you will have a verdict form. And you  
10 will use that verdict form. It will help structure your  
11 deliberations.

12 Once you have reached a verdict -- and your verdict  
13 must be unanimous, ladies and gentlemen -- the foreperson  
14 should write me a note and say, your Honor, we have reached a  
15 verdict. Also, always date and time the note. Don't tell me  
16 what that verdict is in the note. Then we will bring you out  
17 here and in a rather formal proceeding I will take that verdict  
18 with the reporter here.

19 Your verdict must be announced only in open court at  
20 the end of your deliberations, and your verdict must be  
21 unanimous.

22 You will see at the end of the verdict sheet, after  
23 you have answered the various questions -- I think there are  
24 five or six -- each of you should sign the verdict sheet and  
25 then, as I say, the foreperson should send me a note.

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1 I am going to ask that tomorrow morning -- it's late  
2 now. I don't want to keep you. It's 5:00. I want to give you  
3 adequate time to vote, if you haven't voted and if you so  
4 choose to vote. For one, I am quite tired so I don't want to  
5 keep you here. But let's meet at 9:15. There can be no more  
6 legal wrangling and there is no more testimony. When you're  
7 all here 9:15, you are going to get this case for your  
8 deliberation. We will have a marshal here and he will be sworn  
9 to take you into the deliberation room and leave you alone  
10 there and not let anybody come in and interfere with what  
11 you're doing. That's all formal. I have never had anybody try  
12 to enter a deliberation room to interfere with the jury, but  
13 it's a nice formalistic statement in the oath of the marshal  
14 that impresses upon everybody the importance of jury  
15 deliberations.

16 I am going to ask that the jury choose its own  
17 foreperson. If you can't do that, I don't want any  
18 disputation. If you have trouble picking a foreperson,  
19 somebody should send me a note and say we can't pick a  
20 foreperson. I will choose a foreperson. But I think in the  
21 first instance the jury can choose its own foreperson.

22 Sidebar, please.

23 (At the sidebar)

24 THE COURT: Apart from the limited number of  
25 objections that were stated, does anyone have any objections to

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1 the charge as given or seek additional charge?

2 MR. PAUL: No.

3 MR. SCHMIDT: No.

4 MS. FLETCHER: No.

5 THE COURT: I have one infinitesimally small change.  
6 On page 58 there was a typo there. I have deleted the word  
7 "is." So it should read: In order to prove the first object  
8 of Count Two, the government must prove beyond a reasonable  
9 doubt that two or more persons knowingly agreed to conduct a  
10 financial transaction.

11 MR. SCHMIDT: No objection.

12 I do have one point. We reviewed our 3500 material as  
13 to Brooke Marcus. Brooke Marcus makes it clear that she was  
14 not supposed to giving leads to Arash Ketabchi from First  
15 Trend. That's why she was fired. We don't have the specific  
16 date that she was fired so I can't say that she was fired on a  
17 specific date. However, considering the argument made by the  
18 government that she could have went back to First Trend or  
19 Elite and do the deal there instead of A1, I didn't expect  
20 that, because I don't think she could --

21 THE COURT: But you don't know because you don't have  
22 the date.

23 MR. SCHMIDT: Also, the witness testified that she  
24 said she was leaving the company, going to a new company, and  
25 she changed the name in the phone to A1. I would have raised

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1 that. So I am asking your Honor if I could reopen my closing  
2 argument for two minutes to make that point.

3 THE COURT: Government.

4 MS. KEARNEY: I have no idea what Mr. Schmidt is  
5 referring to in the 3500. If he wouldn't mind pointing it out,  
6 perhaps we could respond. I can say I personally met with Ms.  
7 Marcus and she never represented to me that she had been  
8 terminated from First Trend or Tri-Star.

9 THE COURT: Do you have that 3500 material?

10 MR. SCHMIDT: We have a transcript we made of a  
11 two-hour meeting that she had with government agents.

12 THE COURT: Let me see it.

13 What I would like to do is to tell Juror No. 14 that  
14 he doesn't have to come in tomorrow. That will save a day for  
15 him. He can go back to work. I am not going to formally  
16 excuse him, just in case somebody doesn't show up from the  
17 jury, but I would like to save him the day. Is there any  
18 objection?

19 MR. SCHMIDT: No objection.

20 MR. PAUL: No.

21 MS. FLETCHER: No.

22 We also have the updated verdict form, which is the  
23 same as the prior one, except the lines and the date.

24 THE COURT: Let me see it if you have it.

25 (Counsel conferred)

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1 THE COURT: The first section that we were shown had  
2 nothing about a date.

3 The second section, which is what page?

4 MR. TUREFF: Page 4.

5 THE COURT: Of an interview that Bastos had with Ms.  
6 Marcus, June 21, 2018.

7 MS. KEARNEY: That's not the date of the interview.

8 THE COURT: You're right.

9 Go to page 4.

10 THE COURT: Ms. Marcus says: "I knew about it  
11 probably 2014 because I stopped working for First Trend  
12 Marketing and for about six months I worked solely for Arash."

13 MR. SCHMIDT: The first part indicated that the  
14 problem was that she gave leads to Mr. Ketabchi instead of Mr.  
15 Sinclair, which was the problem that led her to have to leave.

16 THE COURT: I don't see that.

17 "How did your relationship kind of dissolve with First  
18 Trend?"

19 Marcus says to Arash: "Actually."

20 Then unidentified female voice says: "So would they  
21 still -- I don't know -- hold you credible? Would they still  
22 hold you as someone that they would trust at this point?"

23 Marcus says: "Brandon would."

24 Then Detective Bastos says: "Why did it dissolve?"

25 And Marcus says: "Because I got some leads to Arash

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1 that should have been sent to Bill Sinclair."

2 Bastos says: "How did that happen?"

3 Marcus says: "Because I thought Arash would do a  
4 better job out of them, and Jason wanted me to send them to  
5 Sinclair, because Sinclair was processing for us and I sent  
6 them to Arash."

7 Bastos says: "And how did Sinclair -- I mean, how did  
8 Arash, which way did he tell?"

9 Unidentified female voice says: "You sent them to  
10 Arash?"

11 Ms. Marcus says: "I sent them to Arash."

12 Bastos joins in and says: "Oh, you sent them to  
13 Arash."

14 Government.

15 MS. KEARNEY: Can you read the next section, because I  
16 think this is some of the confusion.

17 Ms. Marcus is elevated in 2014, which is long before  
18 any of the interactions, and, indeed, even before she was  
19 working for First Trend and sent that lead list. If you look  
20 at the list, she sent it at the end of the December 2015. That  
21 is when her first conversation is -- when Jane Thompson's first  
22 conversation is with Jonathan Stewart. I think the dates are  
23 crossed here.

24 MS. FLETCHER: She is confusing the dates.

25 THE COURT: I am not going to reopen it after the

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1 charge has been given for two minutes of an additional  
2 summation.

3 Are you moving for a mistrial?

4 MR. SCHMIDT: I am moving for the mistrial.

5 THE COURT: Denied.

6 I will just tell them to come back tomorrow and I will  
7 have number 14 come to the side.

8 (In open court)

9 THE COURT: Ladies and gentlemen, enjoy the evening.  
10 We will see you tomorrow by 9:15. Keep an open mind. You have  
11 heard all the testimony. You have heard the summations. You  
12 haven't started deliberations. 9:15. If everybody is here, we  
13 will begin at 9:15.

14 (Jury exits courtroom)

15 THE COURT: Mr. Cary, we deliberate only with 12  
16 jurors. I am not going to formally excuse you at this time for  
17 the following reason. If I were to formally excuse you, I  
18 could not put you into the deliberating jury if something  
19 happened to one of the deliberating jurors. I can tell you  
20 that in 23 years as a judge I have never had to insert someone  
21 into a deliberating jury. Nonetheless, if for some unknown  
22 reason somebody doesn't show up tomorrow, or somebody gets sick  
23 or if it's something like that, it may be necessary. But I  
24 didn't want you to have to come in tomorrow simply to  
25 immediately turn around. So without excusing you, you don't

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1 have to come tomorrow. You don't have to report to the jury  
2 clerk or anything like that. I doubt I will need to summon you  
3 back, but just in case, my deputy will contact you if we need  
4 you. Again, I really doubt it. So thank you for your jury  
5 service.

6 By the way, don't think for a moment, as one of the  
7 lawyers said in the summation, that your service is wasted  
8 because the lawyers really do watch the jurors throughout the  
9 trial and it is important that you be available in case --  
10 especially in a two and a half week trial -- in case somebody  
11 has to drop out. So I, my staff, the lawyers, the parties  
12 thank you, sir. You are not excused, but you may have nothing  
13 to do with us in the future. Thank you.

14 (Juror exits courtroom)

15 THE COURT: 9:15 tomorrow.

16 (Adjourned to November 7, 2018, at 9:15 a.m.)  
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